STATUTE MAKING

A Treatise on the Means and Methods for the Enactment of Statute Law in the United States

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By

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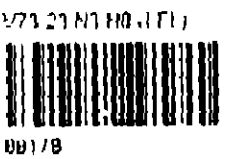

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PREFACE

The primary object of this work is to explain the steps involved in the enactment of statute law in the United States. It is not intended to treat the subject exhaustively, but to cover the procedure sufficiently well to serve the needs of those who may be interested in legislation, either in school, business or professional life. No prior knowledge on the part of the reader has been taken for granted, and elementary considerations have been treated briefly to form the necessary foundation for an understanding of the principal topic.

It is hoped that in the hands of any intelligent reader, without any knowledge of law, this book will serve to acquaint him with principles and terminology of statute making and parliamentary procedure in the United States, sufficient for any dealings he may have with the subject. In the hands of the lawyer or other person familiar with the elementary matters, it will serve as a reference work on procedure.

To describe the process by which written American law is initiated and enacted is the aim of this book. The fundamental nature and background, except for a cursory discussion in the introduction, are outside the scope of this book. Similarly, in outlining the branches of government, reference to the judicial and executive departments is made only to the extent it is necessary to explain their part in statute making. On the other hand, care has been taken to cover not only legislatures, but other means for bringing about the passage or defeat of statute law—hence the chapters on persuasive influences and the initiative and referendum.

Acknowledgment is cordially given to the staff and services of the publishers for their assistance, especially the STATE LEGISLATIVE REPORTING SERVICE, ADVANCE SESSION LAWS, and CONGRESSIONAL LEGISLATIVE REPORTING SERVICE, which currently report the State and Federal statute making developments.

A. B. COIGNE

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INTRODUCTION

In its broadest sense, human law includes every rule, grant or requirement, by whomever made, which the governing power will respect, enforce or use for the determination of rights, privileges, and restrictions upon behavior, from constitutions, statutes, common law, edict, ukase, executive order or treaty, even in a sense down to the by-laws and resolutions of corporations, associations or social organizations, to the extent of their effect upon those within their influence.

The general body of the law has been classified and subclassified according to the aspect under consideration. Thus, a general classification has been made geographically of which international law forms one part, and all the rest of the laws, variously called municipal, internal, domestic or national, form the other. International law itself is sometimes subdivided into public and private—the former controlling the relations between governments, the latter between individual citizens of different nations. Consideration of the ends and the means in law results in classification into substantive and adjective. By the former is meant the rules governing rights, duties, etc., in a real or substantive manner; the latter deals with the remedies and forms of procedure and administration as such.

Finally, there is the classification of law into common and statute, and these classifications are the most important for the purposes of the present work. Sometimes they are referred to popularly and inaccurately as "the unwritten and written law." The term "unwritten" has its origin in the fact that the courts often recognize the controlling force of generally accepted customs in trade which are otherwise not repugnant to other law.

Statute law, with which this work has to do, is defined as "A law established by the act of the legislative power." [1] But the term "legislative power" must be understood to include all agencies for the enactment of statute law. Thus, the people exercise legislative power in the initiative and referendum states, and the President of the United States, in a very real sense, exercises legislative power in the making, with foreign nations, of executive agreements and, by and with the advice of the Senate, treaties which thus become the law of the land superior to state laws and preexisting federal statutes. The term "statute law" also in-

[1] Bouvier's Law Dictionary, Rawle's third revision.

cludes all that vast body of local ordinances of minor governing bodies such as counties, cities, villages and others.

Moreover, the regulations laid down by many administrative officials, though considerably limited and circumscribed, are, in reality, statutes by authority of the legislature. Such regulations, however, are never so called in actual legal practice. Indeed, the legislatures have more than once been forbidden to delegate their powers so as to enable any other official, board, bureau or agency to enact a statute; but the line of demarcation between such regulations and the statutes, officially so called, is an uncertain one so far as concerns the substance of such regulations. While it is probably theoretically true that regulations are a kind of statute, all that is meant by the term "statutes," in practical application to federal and state enactments, is that body of acts passed by the legislature or by the people and printed and published from time to time as session laws, compiled statutes, codes, etc.

This is the only kind of law with which this book deals and we propose to set forth the method by which proposals to enact it are set in motion and carried on to final passage or defeat.

PART I

THE INSTRUMENTS FOR THE ENACTMENT OF NEW STATUTE LAW

CHAPTER 1

PERSUASIVE INFLUENCES

¶ 1. Inconclusive Steps

The making of statute law does not necessarily begin with the legislator. While he is officially entrusted with the power to introduce, and with his associates and the governor, to enact legislation, there are numerous influences which may eventually lead to the formal introduction wholly apart from his own opinions or initiative. Indeed, in Massachusetts most of the bills are introduced as a result of petitions of others than legislators, so that when a member of the House or Senate himself seeks to introduce a bill on his own initiative, he does so "by leave" almost as though he were being granted a privilege. This situation is not so apparent in the other states, but traces of the tendency may still be found in some of the older jurisdictions, especially in New England.

The steps prior to actual introduction include many legitimate but legally ineffective or inconclusive steps (and needless to say many illegal and improper steps) and other procedures which, though they do not actually result in the introduction of the bill, do definitely, effectively and legally lead to that end. In the former variety we may include various movements, agitations, irregular petitions, campaigns, advertising, speeches, activities of the National Conference of Commissioners on Uniform State Laws, associations of state officials, pressure groups, and lobbyists. Among the influences recognized by law or rule are regular petitions usually accompanied by a bill (as in Massachusetts) and recommendations of the governor, departments of the state and party caucuses.

None of these agencies have the power actually to make a law, and most of them require the intervention of a legislator even to accomplish the introduction of a bill leading to the enactment of a law. The action taken by these groups, agencies and officials in initiating a measure is therefore inconclusive.

Not included in this category is that device for the enactment of legislation by the people, known as the initiative, which, though

not always resulting in the introduction of a bill into the legislature, is itself sufficient to bring about an enactment (see chapters 2 and 3).

¶ 2. Commissioners on Uniform Laws

The National Conference of Commissioners on Uniform State Laws is an official body, the members of which are provided for by statutes throughout the country. The first meeting of the Commissioners was held at Saratoga Springs in New York on August 24, 1892. In annual meetings since then many subjects deemed to be proper matter for uniformity have been considered and proposed to the state legislatures. As a result of these proposals, a greater degree of uniformity has been accomplished among the states on a number of matters than would otherwise have been effected.

Thus, the Negotiable Instruments Act has been universally adopted and, but for a few states, the same is true of the Warehouse Receipts Act, the Narcotic Drug Act, the Act to secure the attendance of out of state witnesses, and other laws. The Conference also seeks to secure uniformity in court decisions respecting these subjects, but this, of course, can be accomplished only by legislation. There are proposals from time to time in the states to amend these uniform Acts, thus destroying their uniformity. The states have been slow to adopt some of them and, though one of the earliest and most needed, nothing has been done about the uniform divorce law. Other matters which lag include arbitration (which only a few states have adopted), conditional sales, criminal statistics, interparty agreements, trusts, and several laws relating to evidence.

The members of the Conference serve without pay, receiving only their expenses. Each state provides for the number of its conferees and their terms of office. The average number of conferees is three, each holding office for four or five years and eligible to reappointment. The Conference has long enjoyed a good reputation and great respect. The example of interstate cooperation set by the Conference is said to have been a factor in the eventual formation of the Hague Conference.[1] The conferees for each state submit their reports to the legislature as often as required by local statutes—generally at the regular session. As with other bodies, official or otherwise, they do not themselves directly introduce bills.

[1] Judge Simeon E. Baldwin, 17 Harvard Law Review, 403.

¶ 3. The Council of State Governments

Since the establishment of the National Conference of Commissioners on Uniform State Laws there has been a slow but constantly increasing movement for cooperation and study of mutual problems among the states, implemented by the creation of various associations composed of state officials. The principal coordinating and cooperating body for the various associations which have come into existence as a result of this movement is the Council of State Governments, originally organized in 1925 as The American Legislators' Association and reorganized under its present name and form in February 1935. Associating and cooperating with this Council are groups such as the Governors' Conference, the National Association of Attorneys General, the National Association of Secretaries of State, and the National Conference of Commissioners on Uniform State Laws. The Council is the secretariat of all except the last of these.

Collaboration among the states is effected through the appointment of commissions on interstate cooperation which consist not only of members of the state legislatures, but also of administrative officials. Once every two years a general assembly is held in Washington. The Council is officially recognized by nearly all of the states, and the American Legislators' Association which preceded the organization of the Council, by all. The problems discussed are by no means all legislative or solved by legislative action. As in the case of other persuasive influences, the Council does not, of course, introduce any legislation but merely makes recommendations to the respective legislatures.

Within the Council exists a body termed the "General Assembly" and, like the general assemblies of most states, it meets biennially in the odd numbered year. Representation is provided for commissions on interstate cooperation by members of the house and senate of the legislature and by one administrative official. At these assemblies, common problems of the states are discussed. These have included such subjects as tax competition, social security, crime and various problems of interstate relationship.

¶ 4. Legislative Councils

Alabama, Connecticut, Illinois, Kansas, Kentucky, Maryland, Nebraska, Oklahoma, Rhode Island, and Virginia have each established a legislative council. The principal object of these bodies is to give intersession study to important state problems so that when the

legislature convenes it will have a program recommended to it which has already had the benefit of the study of legislative leaders. It is often impossible to give adequate attention to the problems which arise during a session, especially when that session is subject to a time limit. Moreover, the legislative councilor is usually equipped with a research staff and, having more time, is better able to assemble the facts necessary to the passage of sound laws than the legislature as a whole.

Alabama, Illinois, Kansas and Oklahoma meet quarterly; Nebraska, twice a year; Rhode Island, every week; and the rest, whenever occasion arises. They are principally composed of legislative leaders, but in Connecticut and Kentucky there are some non-legislative members. Bills introduced pursuant to the recommendations of these councils, which are thus already approved by some of the important men in the house and senate and administrative departments, ought naturally to have a better opportunity for prompt consideration and passage. None of these councils introduce bills directly in their own name, but through legislators.

Alabama, Illinois, Kansas and Oklahoma publish their proceedings. In Virginia, when a regular session of the assembly is about to convene, the group studying a particular problem draws up a report which sometimes includes a draft of a suggested bill to remedy the situation. The reports of the studies on the subject are printed in pamphlet form and presented as a house or senate document. One of the rules in the Illinois Legislative Council was that proposed bills should be submitted to the legislature on a majority vote of the Council. Although this would seem to be only a harmless and helpful procedure, some members of the general assembly complained that the Council was acting as a super-legislature and, as a result of this attitude, the Council dropped the aforementioned rule in 1942. The Council does not now prepare bills for introduction by members of the legislature. It merely collects and disseminates the information and lets the members of the general assembly decide whether introduction of a bill is warranted. The Council's reports, formerly issued biennially, since 1942 have been issued annually. They contain a review of activities, summary of research work, rules, standing committees, title and history of proposals introduced and a list of research publications issued. The Rhode Island Council, though scheduled to meet weekly, seems to be more or less inactive and little, if any, legislation has heretofore emanated from that source. In Kentucky, the bills recommended by the Legislative Council usually carry out the view of the state administration and are

sponsored in the House and Senate by the majority floor leaders. Although no journal of their proceedings is published before the general assembly convenes, the Council usually makes available to the press a synopsis of its recommendations. In Maryland, the Legislative Council introduces its bills through the President of the Senate and the Speaker of the House. It is the practice of the Council to have about half the bills which it submits introduced in each house. Although no journal is published, it does publish minutes in connection with the report which it submits to the general assembly. The minutes are not available from time to time as they would be in the case of a legislative journal, but are published in multigraphed form only when the report is submitted. The Nebraska Council meets at the call of the chairman and decides what subjects to study. The report on each matter is printed and distributed to the public and the Council then sponsors certain bills and measures. There are similar bodies not calling themselves councils in Indiana, Maine, Missouri and Pennsylvania.

¶ 5. State Agencies

While the various state departments, boards and bureaus of any state (such as the commissioners of insurance, education, conservation, the adjutant general, the department of state, the public utilities commission, etc.) may request legislators to introduce bills or ask the governor to make recommendations to the legislators, it is the regular procedure in Massachusetts for such agencies to make recommendations and draw bills on matters of concern to them for introduction at the next session. These introductions are made directly without the intervention of a legislator. Their recommendations must be filed before the first Wednesday in December of the year preceding the session (see ¶ 222).

¶ 6. The Governors' Messages

At the beginning of the session, the governor delivers a message to the legislature in which he reviews the condition of the state and recommends legislation. Sometimes the outgoing governor, whose term may extend beyond the time when the legislature convenes, also delivers a message, reviewing the past, but rarely recommending legislation. These messages always receive state-wide publicity, greater than that obtainable by any one legislator, and have the effect of shaping the course of legislation. Other messages may also be delivered from time to time in the course of the session. The governor's influence is great because of his leadership of the state and of his party, his power

of veto and his power of dispensing patronage; so that, especially where his party is in the majority in the legislative chambers, his message must be read as a general forecast of important laws to be passed at the session.

In some states it is customary for the governor to deal only with matters other than financial in the message which he submits at the beginning of the session. When a budget is ready, he then delivers another message to the legislature in which he reviews the anticipated income and expenditures and makes recommendations regarding taxation or other sources of revenue by which he proposes to raise the money necessary to carry on the government of the state for the biennium.

In Massachusetts, the governor's messages are treated as bills in that they are assigned numbers (H. 1 and S. 1) and are referred to committees for the preparation of bills based upon the messages in accordance with the custom in that state. Indeed, the governor often submits proposed measures with his message, which he thus virtually introduces though not a member of the legislature.

¶ 7. Legislative Counsel

Lobbyists for special interests, movements, pressure groups, etc., have, of course, no official standing relative to the introduction of bills, but the legitimate exercise of their profession is everywhere recognized and in some states regulated to minimize or prevent abuse. It ought to be plain that "selfish interests" have as much right to present proper arguments for or against the introduction or passage of bills which will affect their rights or duties or impose taxes upon them as any defendant in a case before any court has a right to counsel, and that such interests may have a just contention, and are not at all necessarily opposed to the general public interest.

It is true that the history of efforts to influence legislation contains many incidents and periods of an unsavory nature including various forms of bribery and corruption. The same may be said in varying degrees of any honorable trade, profession, or activity. It is not only the right of any interest to present its point of view with candor and honesty by open argument to a legislature or legislative committee, but it is the duty of the lawmakers to seek all the arguments and facts, pro and con, by encouraging the presentation of views in this way on controversial measures, whether through legislative counsel or not. Needless to say, by no means is all of the lobbying that is done on behalf of business

interests. There are various movements and theories for social betterment and progress which, right or wrong, deserve their day in court when matters of concern to them are at issue. Fortunately, there are very few legislators who regard the privilege of enacting laws as something in which the public or any part of it has no right to interfere or voice an opinion.

> "We must have a 'due process' in legislation as well as in court trials. A law passed without notice to those to be affected and without giving them a chance to appear in their own defense stands in great danger of being unfair. A judgment without notice and hearing is revolting to Anglo-Saxon ideals of personal liberty, and though the passage of a law has not the technical character of a judgment it is nevertheless a determination of rights. So far as any legislating body fails to hear both sides, its acts fall short of the proper standard for law. A legislator must hear both sides before he votes. If the people are legislators, they can do so at best on but a few measures. It is only in unusual cases that both sides of a question can be presented to them." [2]

Many states and Congress require the registration of all lobbyists and legislative counsel indicating the interest which they represent; and they are usually forbidden to appear upon the floor of the legislature acting as a body but may appear before the committee of the whole or any standing committee. They are sometimes required to wear designating buttons. A facetious bill introduced in a southern legislature some years ago required brilliantly striped uniforms.

Oregon Senate Rule 20 makes the following provisions regarding lobbying:

> "No person engaged in presenting to the senate or any committee of the senate any business or claim for legislation shall be permitted to engage in such business during the sessions of the senate or be permitted on the floor of the senate during its session. Any person transgressing this rule shall be removed from the floor of the senate and be denied the privilege of the floor during the remainder of the entire session. The president is charged with the enforcement of this rule, but it shall not apply to members of the legislature."

It is generally agreed that any regulation is in order which gives the freest exercise to the legitimate uses of argument and persuasion while curbing subversion and corruption.

[2] Statute Law Making, by Chester Lloyd Jones, page 31.

TITLES OF FUNDAMENTAL COMPILATIONS OF LAWS OF THE SEVERAL STATES

Alabama	Code of Alabama
Arizona	Arizona Code Annotated
Arkansas	Pope's Digest of Statutes of Arkansas
California	Deering's California General Laws
	Deering's California Codes
Colorado	Colorado Statutes Annotated
Connecticut	Connecticut General Statutes
Delaware	Revised Code of Delaware
Florida	Florida Statutes
Georgia	Georgia Code
Idaho	Idaho Code Annotated
Illinois	Illinois Revised Statutes
Indiana	Burns' Indiana Statutes, Annotated
Iowa	Code of Iowa
Kansas	General Statutes of Kansas, Annotated
Kentucky	Kentucky Revised Statutes
Louisiana	Louisiana General Statutes, Annotated
	Civil Code of Louisiana
Maine	Revised Statutes of Maine
Maryland	Annotated Code of Maryland
Massachusetts	General Laws of Massachusetts
Michigan	Compiled Laws of Michigan
Minnesota	Minnesota Statutes
Mississippi	Code of Mississippi
Missouri	Revised Statutes of Missouri
Montana	Revised Code of Montana
Nebraska	Revised Statutes of Nebraska
Nevada	Nevada Compiled Laws
New Hampshire	Revised Laws of the State of New Hampshire
New Jersey	Revised Statutes of New Jersey
New Mexico	New Mexico Statutes
New York	McKinney's Consolidated Laws of New York
	Cahill's Consolidated Laws of New York
North Carolina	The General Statutes of North Carolina
North Dakota	North Dakota Revised Code
Ohio	Page's Ohio General Code, Annotated
Oklahoma	Oklahoma Statutes
Oregon	Oregon Compiled Laws Annotated

Pennsylvania ..... Purdon's Pennsylvania Statutes, Annotated
Rhode Island ..... General Laws of Rhode Island
South Carolina.... Code of Laws of South Carolina
South Dakota . . South Dakota Code
Tennessee ..... Code of Tennessee

Texas ..... Vernon's Texas Civil Statutes
Utah ..... Utah Code, Annotated
Vermont ..... Public Laws of Vermont
Virginia ..... Michie's Virginia Code, Annotated

Washington..... Remington's Revised Statutes of Washington, Annotated
West Virginia . . . Official Code of West Virginia
Wisconsin ..... Wisconsin Statutes
Wyoming ..... Wyoming Compiled Statutes, Annotated

CHAPTER 2

THE INITIATIVE AND REFERENDUM

¶ 8. Definitions

The initiative is that right under which a specified number of the electorate may jointly propose laws to the legislature or directly to the people for their approval or disapproval at an election. In several states where the initiative exists, measures are not, or need not be, submitted to or through the legislature. In others, they must or may be first submitted to the legislature which, if it rejects them, must refer them to the people. The referendum is a power retained by the people to veto legislation. Under this law sufficient petitioners may prevent an act passed by the legislature from going into effect, or suspend its operation after it has gone into effect, until it has been submitted to an election.

¶ 9. Local and State-wide Initiative and Referendum

In many states, the rights of initiative and referendum are granted to the citizens of some or all municipalities and local governments. Where state-wide initiative or referendum exists, provision is always made for the local initiative or referendum. Existence of the local initiative or referendum, on the other hand, does not necessarily presuppose the state-wide law. In general, provision is usually made for a larger percentage of voters to initiate measures locally, and the basis of this percentage of voters is ordinarily the number of votes cast for governor at the preceding election. In Massachusetts, the voters have the power, upon securing 1200 signatures in any senatorial district, or 200 signatures in a representative district, to ask for submission to the voters of that district any question or instructions to the senator or representative which, when approved by the secretary of state and attorney-general, are placed by them on the ballot.

¶ 10. List of Initiative and Referendum States

The constitutions of the following twenty-two states make provision for state-wide and local referendum. All but Kentucky, Maryland and New Mexico also provide for state-wide initiative:

Arizona	Colorado	Maine
Arkansas	Idaho	Maryland
California	Kentucky	Massachusetts

Michigan	New Mexico	Oregon
Missouri	North Dakota	South Dakota
Montana	Ohio	Utah
Nebraska	Oklahoma	Washington
Nevada		

Kentucky permits referendum only on taxation and classification of property, providing a lower rate of taxation on tangible and intangible personal property than upon real estate, and on acts authorizing certain debts to be contracted on behalf of the Commonwealth for which annual taxes are levied to pay interest and discharge the debt. Some other states have laws more or less of an initiative or referendum nature but not in the sense meant here. Thus, Georgia provides a limited form of local initiative and referendum on the sale of public utilities and on some tax matters. In Iowa, in cases of government of cities by commission and by manager plan, petitions protesting ordinances may be initiated. Iowa also provides for referendum in matters of changes of county boundary lines, state debts contracted for some single work or object and acts creating corporations or associations with banking powers, including state banks, or amendments thereto.

¶ 11. Form—Prohibited Subjects

The method by which an initiated measure is put on the statute books is similar among the states in general outline as sketched in the following paragraphs. Limitations on the scope of such legislation appear in some but not all of the constitutions. Massachusetts lists the most limitations. It forbids the initiation of measures the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or which make a specific appropriation of money from the treasury of the commonwealth; or those relating to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts. But the General Court is required to raise, by taxation or otherwise, the necessary money to carry initiative measures into effect. Amendment to the constitution relative to the free exercise of religion and aid to sectarian schools is not subject to initiative petition, and any proposition inconsistent with any one of the following rights of the individual in the declaration of rights may not be the subject of an initiative or referendum petition: the right to receive compensation for private property appropriated to

public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly. No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum may be the subject of an initiative petition; nor is the section making these limitations subject to such a petition. The constitution of Montana excepts from initiative measures matters relative to appropriation of money. The constitution of Nebraska imposes the same limitations upon the subject matter of initiated measures as it does upon the subject matter of bills introduced in the legislature, and a similar limitation is expressed in the South Dakota constitution. Maine permits any subject which does not result in an amendment to the constitution, and Michigan forbids acts making appropriations to state institutions or to meet deficiencies of state boards and any measure which could not be enacted by the legislature.

The form of the petition is often specified by law—the size of the paper, the number of signatures to a page, etc. Some of these requirements are absolute, for instance, as to the qualifications of the subscribers, and the necessity of their signing; but others are regarded as directory only, and substantial compliance is enough. Also, clerical errors may be excused.[1] The title ought to be as adequate as the required title for a legislative act in the state in which the petition is made, but there seems to be a tendency toward a little more leniency than there is with titles of bills introduced in the legislature.[2] Sometimes titles must be limited to a given number of words, and where this is so, the courts tend to make liberal rules and exceptions to allow validity.[3] An enacting clause is required, which runs in the name of the people of the state.

¶ 12. First Steps—Preliminary Filing

A petition accompanied by a proposed law or a proposed amendment to the constitution is drawn by an interested person or group. The constitution sometimes provides specifically that these must be qualified electors. In any case, if they are subscribers to the petition, they must be qualified electors. If the con-

[1] In re Opinion of the Justices, 114 Me. 557, 95 A. 869; In re Opinion of the Justices, 116 Me. 557, 103 A. 761; State v. Thurston County Superior Court, 81 Wash. 623, 143 Pac. 461.

[2] State v. Langworthy, 55 Ore. 303, 104 Pac. 424.

[3] State v. Dixon, 59 Mont. 58, 195 Pac. 841.

stitutional provisions or the statute does not specify what shall be the qualifications of those who circulate a petition, a minor is eligible,[4] and the fact that he received pay for circulating the petition does not make it ineffective.[5] A good example is the constitution of Arizona, which provides for both local and state-wide initiative. Article IV, Section 1, Paragraph 9 reads:

> "Every initiative or referendum petition shall be addressed to the Secretary of State in the case of petitions for or on State measures, and to the clerk of the board of supervisors, city clerk, or corresponding officer in the case of petitions for or on county, city, or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the State (and in the case of petitions for or on city, town, or county measures, of the city, town or county affected), his post office address, the street and number, if any, of his residence, and the date on which he signed such petition. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition, setting forth that each of the names on said sheet was signed in the presence of the affiant and that in the belief of the affiant each signer was a qualified elector of the State, or in the case of a city, town, or county measure, of the city, town, or county affected by the measure so proposed to be initiated or referred to the people."

A minimum of ten electors is required in Massachusetts to prepare the preliminary papers; twenty are required in Idaho, five in Utah. Other states do not specify a minimum number, although if it is desired ten or more electors in Ohio may submit their proposed bill to the Legislative Reference Department for examination and certification.[6] This, however, is not mandatory. The form of the petition which is to be signed by solicited voters is usually prescribed in much detail by law, and suitable blanks are sometimes furnished by the secretary of state. Substantial observance of the requirements of the law relative to the circulation of petitions has been held to be sufficient for their validity.[7] In nine states, a preliminary filing is required with the secretary of state before beginning to obtain the necessary signatures. This

[4] In re State Question No. 138, 114 Okla. 285, 244 Pac. 801.
[5] In re State Question No. 138, 114 Okla. 285, 244 Pac. 801.
[6] Throckmorton's Annotated Code of Ohio (1929), Sec. 5175-29e.
[7] In re State Question No. 137, 114 Okla. 132, 244 Pac. 806.

preliminary submission is for the purpose of approval or preparation of the title or synopsis by the attorney-general before signatures are solicited. In the table following this chapter, the column "preliminary filing before soliciting signatures" does not refer to making a request of that official for suitable forms, blanks or instructions, but only to actual filing requirements. In Arkansas, California, Missouri and Nebraska, the attorney-general approves or furnishes the synopsis or title *after* the signatures are obtained. An appeal usually lies to the courts from his decision.

¶ 13. Signatures Required

It is now necessary to obtain the signatures of a minimum number of qualified voters ranging from 3% to 15% of all the electors of the state, or 10,000 to 50,000 in states specifying the actual figures. The percentage is determined by reference to the number of votes cast at the last election for governor or some other state official. A customary provision is to the effect that these signatures must be fairly well distributed throughout the state in definite proportions provided by law. Eight states require more signatures to initiate an amendment to the constitution than to initiate a law, and more than half the states which have the initiative power require a larger number of signatures to initiate a law than to require the reference of a law. The sheets bearing the signatures must be attached to the petition and each sheet must be accompanied by an affidavit that the signatures were made in the presence of the affiant and that each petitioner is believed to be a qualified elector. In states where initial filing is required prior to the obtaining of signatures, there is usually a time limit for the obtaining of such signatures.

¶ 14. Procedure After Signatures Obtained

When solicitation of signatures is completed, the petition, with the proposed law and the signatures, is filed with the secretary of state (within a specified time before the meeting of the legislature or a specified time before an election), who examines them and passes upon their adequacy. If he decides that a petition or the signatures are inadequate, an amendment may be permitted or the decision may be reviewed and a writ of mandamus obtained compelling the secretary of state to proceed further.[8] The petition may also be challenged by a taxpayer's suit. When the petition is offered for filing, the signatures are then detached

[8] State v. Kozer, 105 Ore. 509, 210 Pac. 172.

from the petition, usually in the presence of the governor and person or persons offering it for filing, although in Colorado the governor's presence is not required. The usual procedure is then to examine the signatures, affidavits and petition for adequacy. The signatures and affidavits are as a rule preserved as public records.

¶ 15. Submission to the Legislature

In some states a proposed law or amendment to the constitution must, and in other states may, be submitted to the legislature. In still other states, the legislature is ignored and the measure prepared for the next election. If submitted, the legislature must proceed to the consideration of the proposed measure and must either pass or reject it without amendment within a fixed time after its receipt, which is usually either forty days or during the current regular session. No provision is made for submission of initiated measures to special sessions. If the legislature is in favor of some similar measure not in the form in which proposed by the petition, it may propose a measure of its own and submit it along with the initiated measure to be voted on at the next election. In any case, if the legislature fails to adopt an initiated measure in exactly the form proposed, it must be submitted to a general election of the people. It is provided, however, in California, Massachusetts and Utah, that submission to an election requires that the petitioners obtain additional signatures, and in Maine such submission is optional with the governor unless requested in the original petition.

¶ 16. Massachusetts Amendments

In Massachusetts, a special procedure obtains regarding the consideration and adoption of constitutional amendments. The initiated amendment may be altered by the legislature by a vote of three-fourths of its members voting thereon in joint session. If one-quarter of all the members elected vote in favor of the proposed amendment, it is referred to the next regular session of the legislature. If it again receives a vote of one-quarter of all the members elected, it is then referred to the people at the next election for adoption or rejection. No provision is made for initiating amendments to the constitution in Montana and Utah. In these states, constitutional amendments must originate in the legislature or in a constitutional convention for subsequent submission to the people.

¶ 17. Procedure Prior to Election

The secretary of state is required to publish the proposals in designated newspapers for various specified periods of time. He also provides for the printing and distribution of arguments for and against the measure, within certain specified word limits. These are printed in pamphlet form and distributed under his direction, and the expense of printing is paid for by the persons submitting them.[9]

¶ 18. Election

The election at which a measure is to be decided is the next general state-wide election occurring the required time after filing, unless a special election has been specified by the legislature or called by the governor. At such elections, the total vote for and against each measure is usually required to equal a certain minimum percentage of the total vote cast at that election. Thus, adoption will not be effective even if more vote "for" such measure than "against" it, if too little interest is expressed one way or the other in the proposal.

¶ 19. Effective Date

Initiated measures usually take effect upon issuance of a proclamation by the governor, but other times are prescribed, including thirty days after election, and ten days after declaration by the secretary of state. Where the effective date depends upon the governor's proclamation, his time to issue it is also limited. It must usually be within a specified time after result of the vote has been canvassed.

¶ 20. Veto—Reconsideration—Referendum

The universal rule is that the governor has no veto power over initiated or referred measures. These adopted measures are usually more firmly on the statute books than bills passed by the legislature, for it is often provided that such laws may not be repealed or amended except by the people. If an initiative measure fails, it is customary to bar reconsideration at any subsequent election for at least three years, and similar provisions sometimes apply to repeal or amendment by the legislature, permitting such repeal or modification only after a period of years. However, if an initiated measure is adopted by the legislature,

[9] State v. Howell, 80 Wash. 692, 142 Pac. 1.

it is usually subject to referendum just as are other non-emergency measures, and may be rejected by the people at the next election.

¶ 21. Conflict in Adopted Measures

The constitutions of some states make provision for the prevention of the enactment of conflicting measures. They each read substantially like the following extract from Article II, Section 25 of the North Dakota constitution:

> "If conflicting measures initiated by or referred to the electors shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law."

Similar provisions appear in the constitutions of Arizona and Arkansas.

STATE-WIDE INITIATIVE PROVISIONS

State	*Signatures required* Bills	Const. Amends.	*Filing provisions with secretary of state of final signatures*	*Submission to legislature*	*Effective date*	*Preliminary filing before soliciting signatures*
Arizona	10%	15%	4 mos. before election.	No	Upon proclamation by the governor.	No
Arkansas	8%	10%	4 mos. before election.	No	30 days after election upon proclamation by the governor.	No
California	8% [1]	8%	90 days before election or 10 days before regular session.	Optional	5 days after declaration by secy. of state.	No
Colorado	8%	8%	4 mos. before election.	No	Upon proclamation by the governor but not later than 30 days after vote canvassed.	No
Idaho	10%	10%	4 mos. before election.	No	Upon proclamation by the governor.	Yes
Maine	12,000	Not permitted.	30 days before close of legislative session.	May adopt. If rejected must be submitted to vote.	30 days after governor's proclamation.	No
Massachusetts [2]	20,000	25,000	Before the 1st Wednesday in December.	Required. If rejected, 5000 additional signatures required for submission to election.	30 days after election.	Yes

[1] Only 5% required if submitted to the legislature.

[2] H. B. 459, Laws 1948, passed by the joint session of the General Court of 1948 and if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following, changes the requirement of 20,000 signatures required for a law and the requirement of 25,000 signatures for a constitutional amendment to 3% of the vote cast for governor. It also changes the requirement of 5000 additional signatures if rejected by the Legislature to an additional ½ of 1% of vote cast for governor.

STATE-WIDE INITIATIVE PROVISIONS—Continued

State	*Signatures required* Bills	Const. Amends.	*Filing provisions with secretary of state of final signatures*	*Submission to legislature*	*Effective date*	*Preliminary filing before soliciting signatures*
Michigan	8%	8%	10 days before commencement of legislative session.	Required. If passed, it is subject to referendum. If rejected, or not acted upon, within 40 days submitted to election.	10 days after declaration of vote by secy. of state.	No
Missouri	5%	8%	4 mos. before election.	No	Upon proclamation by the governor.	No
Montana	8%	8%	4 mos. before election.	No	Upon proclamation by the governor.	No
Nebraska	7%	10%	4 mos. before election.	No	Upon proclamation by the governor within 10 days after official canvass of votes.	No
Nevada	10%	10%	30 days before regular session of the legislature.	Required. Legislature must act within 40 days. Becomes law if adopted subject to referendum. Submitted to election if rejected.	Takes effect upon final declaration of the vote.	No
North Dakota	10,000	10,000	90 days before election.	No	30th day after election.	No

State	Signatures required: Bills	Signatures required: Const. Amends.	Filing provisions with secretary of state of final signatures	Submission to legislature	Effective date	Preliminary filing before soliciting signatures
Ohio	3-6%	10%	10 days before commencement of legislative session.	Required. If passed, is subject to referendum. If not passed, submitted to election upon submission of an additional 3% of signatures.	Upon certification by Board of Canvass as of date voted.	No
Oklahoma	8%	15%	Time for filing petition must be within 9 months of opening for signatures.	No	Upon proclamation of governor.	Yes
Oregon	5%	8%	4 mos. before election.	No	Upon proclamation of governor.	No
South Dakota	5%	5%	No special time required.	Yes. Legislature shall enact and submit all such measures to next general election.	Upon the day of completion of the canvass of votes by the State Canvassing Board.	No
Utah	5%	5%	10 days before commencement of legislative session.	Yes. If legislature fails to act, must be submitted to election if additional 5% of voters added to signatures.	5 days after date of governor's proclamation.	Yes
	10%	10%	4 mos. before election.	No	5 days after date of governor's proclamation.	Yes

STATE-WIDE INITIATIVE PROVISIONS—Continued

State	Signatures required: Bills	Signatures required: Const. Amends.	Filing provisions with secretary of state of final signatures	Submission to legislature	Effective date	Preliminary filing before soliciting signatures
Washington	10% (not more than 50,000)	10%	4 mos. before election or not less than 10 days before regular session of the legislature.	Optional. If filed 10 days before regular session, measure takes precedence and, if enacted, becomes law subject to referendum or may be referred by legislature to election. If rejected, or not acted upon, submitted to next election.	30 days after election.	No

CHAPTER 3

PROCEDURE UNDER THE REFERENDUM

¶ 22. Optional and Compulsory Referendum

Optional referendum is the right of the legislature in its discretion to submit laws to the people for their approval or veto. There seems to be nothing in the constitution or statutes of any of the states or of the federal government forbidding such optional referendum. Compulsory referendum is a provision requiring the submission of a proposition to the people under certain circumstances set forth below. All amendments to the constitution in the various states must eventually be submitted to the people under this compulsory referendum, except in Delaware and New Hampshire. In the twenty-two states listed in ¶ 10, compulsory referendum exists for certain laws as well as all constitutional amendments.

¶ 23. Laws to Which Applicable

The referendum may be applied to any law passed by the legislature except emergency acts. This exception is described in the Arizona constitution (Art. IV, Sec. 1) as "laws immediately necessary for the preservation of the public peace, health, or safety, or for the support or maintenance of the departments of the state government and state institutions." The exceptions to this rule include Arkansas, its constitution specifically permitting a referendum on emergency measures, which, however, remain in full force and effect until repealed by vote of the people, while non-emergency measures do not go into effect until approved. The same provisions are set forth in the Maryland constitution. A decision in Idaho makes emergency acts subject to referendum,[1] and apparently Nevada is similarly unrestricted in this respect. North Dakota and Massachusetts complete the list of exceptions. In Massachusetts, certain matters are excluded from the provisions of the referendum, namely, those that appropriate money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions; or those relating to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or to the operation of laws restricted to a particular

[1] Johnson v. Diefendorf, 56 Idaho 620, 638. 57 P. (2d) 1068.

town, city or other political division or to particular districts or localities of the commonwealth (Art. XLVIII of Amendments). In Michigan and Nebraska appropriation bills are not subject to referendum (Art. V, Sec. 38). Ohio provides (Art. II, Sec. 1-e):

> "The powers defined herein as the 'initiative' and 'referendum' shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property."

The constitution of Kentucky (Sec. 171) provides for referendum only on laws relating to taxing and classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate.

The legislature may not frustrate the right to referendum merely by declaring an act an emergency, and the courts have several times refused to consider the emergency clause as an insuperable obstacle.[2] This is a departure from the general tendency of the courts not to interfere with legislative judgment in such matters. But though they allow themselves the right to inquire, the benefit of any doubt is given to the legislature.[3]

¶ 24. Suspension of Laws in Referendum States

The rule is that non-emergency laws do not take effect for a period of time after enactment. This is ninety days after adjournment of the legislature in ten referendum states; ninety days after approval in Colorado and Massachusetts; sixty days after adjournment in Idaho and Utah, and various other dates in the remaining eight states. These dates are fully set forth in the table following ¶ 220. In the meantime the proper filing of a petition prevents the law from taking effect until it is submitted to the next election. Consequently, in these states, there is no short intermediate period during which the law may be in effect only to be later suspended by the filing of a referendum petition. In Massachusetts, however, an emergency law or one whose suspension is not requested in the referendum petition takes effect and remains effective until thirty days after rejection by the voters. In Maryland, emergency measures may take effect at once and continue in effect until thirty days after rejection at the election at which it is submitted to the people. In Arkansas and Nevada,

[2] State v. Stewart, 57 Mont. 144, 187 Pac. 641. Hodges v. Snyder, 43 S. D. 269, 178 N. W. 575. State v. Becker, 289 Mo. 660, 233 S. W. 641.

[3] State v. Howell, 85 Wash. 294, 147 Pac. 1159.

all laws, emergency or otherwise, remain in effect until repealed at an election, and a similar provision obtains in New Mexico. In Montana, also, the laws remain in effect and petitioners are allowed six months in which to file a petition and suspend the law.

¶ 25. Signatures Required

Eleven states require 5% of the signatures of all the legal voters of the state. Three require 6%, four, 10%, Maine and Maryland 10,000, Massachusetts 10,000 for emergency, and 2% for non-emergency measures. The state of Washington requires 6% but there need not be more than 30,000 voters in all. As in the case of the initiative, there are often provisions to the effect that the signatures must be distributed in a certain manner throughout the state or over a minimum number of counties. In Maryland, of the 10,000 signatures required, not more than 5,000 of them may be from the city of Baltimore. In general, a smaller number of signatures is required on a petition for a referendum than on a petition to initiate a measure. Massachusetts provides for a preliminary petition with only ten signatures which is sufficient to suspend the operation of the law until the required signatures can be obtained.

¶ 26. Intermediate Procedure

In general the laws provide for publication of the matters to be considered in the next election in certain newspapers and at a certain definite time prior to the election after the required number of signatures have been filed in the proper order, and duly verified in a manner similar to that required under the rule for initiative petition. It is usually the general election and the time specified is usually thirty days minimum prior to election. Under certain circumstances, however, the governor may order a special election to be held particularly where there is insufficient time between the perfection of the petition and the holding of the next general election.

¶ 27. Effect of Election

In those states where bills do not become effective within the period allowed for filing a petition, the law will, of course, first come into effect, if at all, on or after the election at which it is submitted. The time when a suspended law comes into effect, or a law not suspended is repealed, is subject to the same rules as those which determine when initiated measures take effect, as described in ¶ 19 and set forth in the two tables following ¶ 21 and ¶ 27.

State	*Signatures Required* [1]	*Emergency Laws Subject to Referendum*	*Effect of Filing Against*		*When Result of Election Effective*
			Emergency Laws	*Non-Emergency Laws*	
Massachusetts [2]	15,000; 10,000 for emergency laws	Yes	Continues in operation until 30 days after election, if repealed	Suspended if requested in petition	30 days after election
Michigan	5% of votes cast for Governor	No		Suspended	10 days after declaration of vote by Secretary of State
Missouri	5% of votes cast for Justice of Supreme Court	No		Suspended	Upon proclamation by the Governor
Montana	5% of votes cast for Governor	No		Continues in operation unless petition is signed by 15% of voters; in such case suspended	Upon proclamation by the Governor
Nebraska	5% of votes cast for Governor	No		Suspended	Upon proclamation by Governor within 10 days of the completion of the canvass of votes

[1] Percentages refer to qualified voters unless otherwise indicated.

[2] H. B. 459, Laws of 1948, passed by the joint session of the General Court of 1948, and if similarly agreed to in a joint session of the next General Court, and approved by the people at the state election next following, changes the requirement of 15,000 signatures to 2% of the vote cast for governor and changes the requirement of 10,000 signatures necessary for emergency laws to 1½% of the vote cast for governor.

STATE-WIDE REFERENDUM PROVISIONS

State	*Signatures Required*[1]	*Emergency Laws Subject to Referendum*	*Effect of Filing Against*		*When Result of Election Effective*
			Emergency Laws	*Non-Emergency Laws*	
Arizona	5%	No		Suspended	Upon proclamation by Governor
Arkansas	6% of votes cast for Governor	Yes	Continues in operation until rejected and repealed	Suspended	30 days after election upon proclamation by Governor
California	5% of votes cast for Governor	No		Suspended	5 days after declaration of vote by Secretary of State
Colorado	5% of votes cast for Secretary of State	No		Suspended	Upon proclamation by Governor, but not later than 30 days after vote canvassed
Idaho	10% of votes cast for Governor	Yes	Continues in operation until rejected and repealed	Suspended	Upon proclamation by Governor
Kentucky	5% of votes cast for Governor	No		Suspended	Upon publication by Secretary of State
Maine	10,000	No		Suspended	30 days after proclamation by Governor
Maryland	10,000	Yes	Continues in operation until 30 days after rejection	Suspended	30 days after election

[1] Percentages refer to qualified voters unless otherwise indicated.

State	*Signatures Required*[1]	*Emergency Laws Subject to Referendum*	*Effect of Filing Against*		*When Result of Election Effective*
			Emergency Laws	*Non-Emergency Laws*	
South Dakota	5% of votes cast for Governor	No		Suspended	On and after day upon which the canvass of the vote by State Canvassing Board has been completed
Utah	10% of votes cast for Governor	No		Suspended	5 days after proclamation of Governor
Washington	6% — no more than 30,000 voters required	No		Suspended	Within 30 days after election—upon proclamation of Governor

[1] Percentages refer to qualified voters unless otherwise indicated.

STATE-WIDE REFERENDUM PROVISIONS—Continued

State	*Signatures Required*[1]	*Emergency Laws Subject to Referendum*	*Effect of Filing Against*		*When Result of Election Effective*
			Emergency Laws	*Non-Emergency Laws*	
Nevada	10%	Yes	Remains in effect until repealed at election	Remains in effect until repealed at election	Upon final declaration of the vote by Supreme Court on first Monday in December
New Mexico	10%	No		Continues in operation unless petition is signed by 25% of voters; in which case suspended	
North Dakota	7,000	Yes	Remains in effect until repealed at election	Suspended	30th day after election, unless otherwise specified in measure
Ohio	6% of votes cast for Governor	No		Suspended	Upon certification by Board of Canvass as of date voted
Oklahoma	5%	No		Suspended	On date of closing of elections, as proclaimed by Governor
Oregon	5%	No		Suspended	Upon proclamation by the Governor

[1] Percentages refer to qualified voters unless otherwise indicated.

[2] (a) Petition signed by 10%—If rejected at election, it shall be annulled and repealed, otherwise remains in force.

(b) Petition signed by 25%—If rejected at election it shall be annulled, otherwise it goes into effect upon publication of certificate by Secretary of State.

CHAPTER 4

FEDERAL AND STATE GOVERNMENTS

¶ 28. Powers

When the thirteen colonies signed the Declaration of Independence, they claimed for themselves a status as sovereign, free and independent nations, each one of them having all the rights, duties and powers among nations in international law that any other nation in the world might have, answerable to no other power in the world, not even to each other, for their domestic or foreign policy. When the delegate from Georgia presented his credentials to the Constitutional Convention in 1787, the official style was "State of Georgia, by the grace of God, free, sovereign and independent."[1] The word "state" used to designate these entities was substantially synonymous with "nations" and in the absence of subsequent Articles of Confederation and the Constitution, they were as independent of each other as the United States is independent of Mexico. Each state was "a whole people united in one body politic." Any one of them might establish a monarchy, declare war on one another, charge import duties on goods received from another state, make treaties, pass bills of attainder and ex post facto laws, keep troops and a navy and do anything else it might wish.

Upon signing the Declaration of Independence, each colony claimed rights which it did not have before, that is, it denied any human authority greater than its own government, in its own affairs. In international relations, the powers of the government were not limited by anything but voluntary adherence to international law and its own will (whether representative of the people's will or not). This must be kept in mind to understand the difference between the powers of the state and the powers of the federal government. States have unlimited powers of government save that which they have voluntarily imposed upon themselves or yielded to the federal government,[2] while the federal government has no power whatever save that granted to it by the states.

This situation is clearly reflected in the form of the state and federal constitutions respectively. The state constitutions spe-

[1] Carl Van Doren, The Great Rehearsal, page 25.

[2] Hannah v. People, 198 Ill. 77, 64 N. E. 776.

cifically limit the things which the legislature or other state departments may not do, while the federal constitution specifies the only things which the Congress or other divisions of the federal government are empowered to do. The federal constitution, moreover, lists limitations on the powers of the states, without which limitations they would have the same rights as sovereign nations. It is true that state constitutions likewise enumerate many things which the various departments of the government may do, but this is more in the nature of distribution of powers than a necessary list of the limits of their activities.

Thus, Section 8 of Article I of the United States Constitution enumerates in eighteen paragraphs the powers of Congress—to tax, borrow, regulate foreign, interstate and Indian commerce, establish laws on naturalization and bankruptcy, coin money, fix standards of weights and measures, punish counterfeiting, establish post offices and post roads, provide for copyright and patents, establish federal courts other than the Supreme Court, legislate with respect to international offenses and those on the high seas, declare war, support and regulate an army and navy, call forth the militia, organize an army and discipline it, govern the District of Columbia and other places purchased by consent of the legislatures of the states, and pass laws relative to the foregoing. Without the enumeration of these powers, Congress could do nothing except exercise control over the District of Columbia after the cession of that land to the federal government. On the other hand, for example, the constitution of Delaware makes no mention of the bills which the legislature may consider, but forbids it to grant divorces or pass certain local and special laws (¶ 133). The federal constitution also provides limitations on the activities of Congress, but they are only limitations of the powers granted by the rest of the document.

¶ 29. Origin and Function of States

As law making and law administering political entities, the American states trace their existence through historical changes both in the quality and the area of their jurisdictions, to diverse sources. All but three of the original thirteen states (New Hampshire, New Jersey and Delaware) were colonies based on royal charters. The three named, though not royal charter colonies, derived their separate status through grants or sub-grants under British authority. Due to imperfect geographical knowledge, and other reasons, these often overlapped, and none had exactly the form they have today; the Council for New England

controlled territory "from sea to sea"; Massachusetts included Maine; North Carolina included Tennessee; Georgia claimed part of Alabama, and so on. In the rest of the nation, Florida was purchased from Spain, the great Louisiana territory from France, and the southwestern states were acquired from Mexico. West of the original states, land came under the jurisdiction of the federal government when Maryland insisted that other states give up their claims to the western wilderness before she would sign the Articles of Confederation. Territorial government was here the prelude to statehood, and the same is true of other western areas. States emerged into their present forms, often after their territories had been under many jurisdictions. Part or all of North Dakota, for instance, was successively part of the District of Louisiana, Louisiana Territory, Missouri Territory, Michigan, Wisconsin, Iowa, Minnesota, Nebraska, "Mandan" Territory and the state of Dakota. Each of these jurisdictions retains something of its legal and cultural origins, though less and less as populations become more heterogeneous, communications become more and more easy and rapid, and the essential factors which influence American thinking and acting become more and more universal throughout the nation. As legislating societies, the British colonies showed fairly consistent and increasing ideals of representative government, with often weak but increasing ideals of equality, freedom and democracy, which could not as easily be said of settlements by other nationalities, the Dutch in New Amsterdam, for instance, in which legislation was by *governor and patroons* and virtually without popular voice. Settlements in the area now occupied by the original thirteen states were at first small groups of Europeans each with more or less common interests within themselves, some religious, some economic or adventurous, surrounded by a vast and hostile wilderness. Communication even with the nearest settlement was hardly less than an adventure, and this, together with the fact that there were often fundamental differences of opinions on things that mattered most to them, made local government not merely desirable but the only kind possible. Today, the original reasons for state governments are not as valid as they once were, but they serve functions, nevertheless, not originally thought of or intended. They have a braking effect on the adoption of new social and economic theories. Whether this is good or bad is a point of view. In any event, the result makes for conservatism. A theory which must be enacted by forty-eight legislatures obviously stands a much smaller chance of universal acceptance throughout the nation than if considered only by Congress. On

the other hand, in modern times, state boundaries have also all too frequently been the basis for the erection of selfish trade barriers and other artificial expressions of self-interest. This leads to a discussion of the controversial subject of state's rights which will not be attempted here.

¶ 30. "Commonwealth" v. "State"

Kentucky, Virginia, Pennsylvania and Massachusetts have chosen to call themselves "commonwealth" instead of "state." The word means the common good, or weal. It was by no means an innovation when adopted by these states. It was in use in England prior to 1600 to designate the English state. It seems to have been dropped because it contains no connotation of royalty and although used by Queen Elizabeth, the period of its greatest official use was the time of Oliver Cromwell. The states which have adopted this term have no sufficient differences in construction or political theory to give them a better right to the term "commonwealth" than any other state in the union. The constitutions of the several states which have this title, where it is first mentioned, make no reference to the nature of their choice. When first used, it was already accepted as its name. Section 75 of the constitution of Virginia, for instance, merely reads, "Commissions and grants shall run in the name of the Commonwealth annexed."

Massachusetts specifically names itself in the following solemn terms:

> "The people, inhabitating the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic, or State, by the name of The Commonwealth of Massachusetts."

It probably indicated the frame of mind or approach of those who were responsible for its use, for the term seems to look a little more toward the people who make up the political entity, while the word "state" seems to have connotations of the political body itself. But these are trifling and unrecognized distinctions and the use of the separate terms are without important significance.

"State" is a term often used synonymously with "nation" in international law. "A state in the sense of the United States Constitution" one judge said,[3] "is defined as a political community of free citizens, occupying a territory of defined boundary, and organized under a government sanctioned and limited by a written

[3] *Texas v. White*, 7 Wall. 700, 19 L. Ed. 227.

constitution, and established by the consent of the governed." As pointed out above, this definition applies neither more nor less to a commonwealth but merely constitutes the selection of a term which stresses one phase of its organization and existence rather than another. The District of Columbia and the territories are not "states." Presumably this is also true of "commonwealth" though it is possible that under some of its definitions, as referring merely to the public, the people of a territory might constitute a commonwealth!

¶ 31. Territories and Possessions

Land belonging to the United States, having a government of its own, but not having been granted statehood, is a territory. The status of these territories is different in important respects from that of the states. As explained above, the original states claimed all the powers which thirteen independent nations might have. Each state admitted to the Union since that time acquired status equivalent to that of her sister states at the time of admission. That is, they may never have had the full freedom of the colonies immediately after the Declaration of Independence, but upon their election to statehood they acquired all the rights of such independence except the rights ceded by the federal constitution. Even organic acts enacted by Congress prior to the admission of a state to the Union restricting the freedom of the state or stipulating or specifying the things it must do after becoming a state, other than those specified in the Constitution, are not binding upon the state upon admission. A territorial government, on the other hand, derives its authority and is dependent upon the will of Congress and such agencies as Congress may establish for its government.

The administration of these territories and of some island possessions is under the Division of Territories and Island Possessions of the Department of the Interior. Alaska, Hawaii, Puerto Rico, and the Virgin Islands each have local governments more or less responsive to the people of those localities. The Philippine Islands became a free and independent nation on July 4, 1946. Meanwhile, between January 1, 1940, and that date, a limited independence was intended to exist. Alaska, Hawaii and Puerto Rico have legislatures consisting of two houses very much along the lines of American state legislatures, but the governors of Alaska and Hawaii are appointed by the president of the United States by and with the advice and consent of the Senate. Puerto Rico now elects its own governor. Alaska and Hawaii are each officially

designated territories, but this designation is not applied to Puerto Rico or the Virgin Islands. In the first two named jurisdictions, the governor and the legislature have the final word on the enactment of laws. In Puerto Rico and the Virgin Islands, however, a bill vetoed by the governor and repassed by the legislature is transmitted for approval or veto to the president of the United States, and all laws passed by these jurisdictions are subject to annulment by Congress.

The Panama Canal Zone does not have a representative government at all. It is controlled by the president of the United States who appoints a governor and administrative officials, state officials being removable at his pleasure. The Division of Territories and Island Possessions of the Department of the Interior also administers Jarvis, Baker, Howland, Canton, and Enderbury Islands. The office of Island Governments and Island Bases of the Department of the Navy supervises civil governments in the islands of Guam, American Samoa and some other United States possessions.

¶ 32. Characteristic Construction of American Governments

In the earliest conceptions of government, powers of all kinds reposed in one central head, the King. Many variations of this concept have occurred in historical times throughout the world, but Montesquieu seems to have been the first to lay down what he believed to be the necessity of the absolute independence of three separate functions of government: the *executive*, the *legislative* and the *judicial*. Each of these divisions of government has functions peculiarly their own, as set forth in the first three articles of the federal constitution and similar articles of state constitutions; but the line of demarcation is not always clear. Each of them creates new law and exercises executive and judicial functions as will be shown (¶ 36). Notwithstanding this, the governments of the United States probably represent the greatest practical separation which the facts of administration, legislation and justice will allow. In England, which also maintains a similar theory of separate governmental functions, the House of Lords is also the high court of that country and Parliament itself exercises, or selects the agents to exercise, many executive functions.

¶ 33. The Legislative Branch

The legislative power of the state is the expression of the sovereign rights of the state and it is without limitations except those imposed by its own constitution and by the granting of

rights and prerogatives to the federal government. Article I of the federal constitution provides for the establishment of the legislative branch, consisting of two houses, designated the House of Representatives and the Senate. The principal power of this department is, of course, the enactment of statutes, and the kinds of legislation which may be enacted, and the kinds which may not be enacted are there set forth. All classes of laws not specifically covered by the federal constitution are outside the powers of Congress, while all classes of laws not forbidden in a state constitution, nor ceded to the federal government, are within the powers of a state legislature. The legislative branch exercises some judicial functions in impeachments, inquiries, trials for contempt, etc. Corresponding characteristic provisions of state constitutions establishing legislative power are similar to those of Connecticut, which read:

> "The Legislative power of this State shall be vested in two distinct houses or branches; the one to be styled the Senate, the other the House of Representatives, and both together the General Assembly. The style of their laws shall be, Be it enacted by the Senate and House of Representatives in General Assembly convened."

And Utah (so as to cover the right of initiative):

> "The Legislative power of the State shall be vested:
>
> "1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.
>
> "2. In the people of the State of Utah, as hereinafter stated."

¶ 34. The Executive Branch

The second article of the federal constitution deals with the powers and duties of the President. It is hardly necessary to point out that these powers and duties differ very greatly in many respects from those of state executives; but as to veto power over legislation, they are similar. The President, and in all the states and territories of the United States, except North Carolina, the governor, has the power to approve or disapprove measures passed by the legislature. This power, however, does not extend to measures initiated by or referred to the people. The governor of North Carolina takes no part in the passage of legislation. (The power of the governor to approve or veto resolutions of various kinds is treated at ¶ 212—217). The executive's principal business is the operation of the state under the laws, and the enforcement and execution of such laws. But many executive orders

have the force of legislation; e. g., the President of the United States makes treaties (by and with the advice and consent of the Senate), trade agreements, issues executive orders and otherwise participates in making laws, and, during war, many extraordinary powers are conferred on governors of a legislative nature where prompt, immediate and efficient action is necessary to expedite prosecution of the war and promote the common defense. The governor also makes appointments, usually with the advice and consent of the senate, while they are in session, and sometimes without their advice and consent, when they are not in session. He is also usually the commander-in-chief of the militia, has the power of pardoning offenses, and generally he must "see that the laws are faithfully executed."

In Massachusetts, the people elect "councilors" and these are called together from time to time at the discretion of the governor, and he, with the said councilors, or at least five of them, from time to time, "hold and keep a Council for the ordering and directing the affairs of the Commonwealth, agreeable to the Constitution and the laws of the land." In New Hampshire, the governor and Council have a negation on each other, both in nominations and appointments. In Maine, the legislators choose the Council "to advise the governor in the executive part of government, whom the governor shall have full power at his discretion to assemble, and he with the councilors, or a majority of them may from time to time hold a council for ordering and directing the affairs of state, according to law."

The terms of office are set forth in a table at the end of this chapter.

An executive alternate is provided in case the office of the chief executive becomes vacant and this is also set forth in the table.

The President of the United States appoints the secretaries of the various executive departments, with the advice and consent of the Senate. In the states, the general rule is that these officials are elected by the people. However, the secretary of state is appointed in seven of the states by the governor; the attorney-general in five.

¶ 35. The Judicial Branch

The third article of the federal constitution, and similar articles of state constitutions, provide for a supreme court, and for such inferior courts as Congress may from time to time establish. The work of the judiciary is primarily to hear cases and determine

rights and justice in each case. But the courts must announce what they understand the common law to be, and to interpret statutes which are held to be uncertain or ambiguous, and even to nullify statutes if they are considered unconstitutional. Some of this amounts to what is called judicial legislation. Indeed, one author goes so far as to define law as "The rules which the *Courts* . . . lay down for the determination of legal rights and duties." "Courts," he says, "are constantly making *ex post facto* law." [4] Conversely, judicial power does not rest exclusively with the judicial branch. The New Mexico constitution provides (Art. VI, Sec. 1), "The judicial power of the State shall be vested in the Senate when sitting as a court of impeachment, a Supreme Court, District Courts, Probate Courts, justices of the peace, and such courts inferior to the District Courts as may be established by law from time to time in any county or municipality of the State, including Juvenile Courts."

¶ 36. Interaction of Branches, and Statute Law

It was intended that each of these branches should act as checks and balances against the other, and it is often claimed that the functions of each are sharply defined and that encroachments are to be discouraged and condemned. The American ideal is well set forth in the constitution of Missouri as follows:

> "The powers of government shall be divided into three distinct departments—the legislative, executive and judicial —each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this Constitution expressly directed or permitted."

The Massachusetts wording (Part the First, XXX) is as follows:

> "In the government of this Commonwealth, the Legislative Department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."

Coming under the special opprobrium of many are the rights of courts to nullify legislation by declaring it unconstitutional, and

[4] The Nature and Sources of the Law (2nd edition), John Chipman Gray, LL.D., page 84.

the increasing power of the federal executive in acting under broad grants or assumptions of authority. Whatever be the merits of these contentions, it is evident that the law is made by all three departments in increasing volume. The enactment of statutes, in its stricter and narrower definition, is still the prerogative of the legislative department of government, and though we will touch upon other kinds of law making, especially treaties, the object of this work is principally the work of the legislature.

TERMS AND YEARS OF ELECTION OF THE CHIEF EXECUTIVES AND ALTERNATE OFFICIALS

Jurisdiction	*Term in Years*	*Terms Begin*	*Alternate*
Alabama	4	1947-1951-1955-1959	Lieutenant Governor
Arizona	2	1947-1949-1951-1953	Secretary of State
Arkansas	2	1947-1949-1951-1953	Lieutenant Governor
California	4	1947-1951-1955-1959	Lieutenant Governor
Colorado	2	1947-1949-1951-1953	Lieutenant Governor
Connecticut	2	1947-1949-1951-1953	Lieutenant Governor
Delaware	4	1945-1949-1953-1957	Lieutenant Governor
Florida	4	1945-1949-1953-1957	President of Senate
Georgia	2	1947-1949-1951-1953	President of Senate
Idaho	2	1947-1949-1951-1953	Lieutenant Governor
Illinois	4	1945-1949-1953-1957	Lieutenant Governor
Indiana	4	1945-1949-1953-1957	Lieutenant Governor
Iowa	2	1947-1949-1951-1953	Lieutenant Governor
Kansas	2	1947-1949-1951-1953	Lieutenant Governor
Kentucky	4	1947-1951-1955-1959	Lieutenant Governor
Louisiana	4	1948-1952-1956-1960	Lieutenant Governor
Maine	2	1947-1949-1951-1953	President of Senate
Maryland	4	1947-1951-1955-1959	President of Senate
Massachusetts	2	1947-1949-1951-1953	Lieutenant Governor
Michigan	2	1947-1949-1951-1953	Lieutenant Governor
Minnesota	2	1947-1949-1951-1953	Lieutenant Governor
Mississippi	4	1948-1952-1956-1960	Lieutenant Governor
Missouri	4	1945-1949-1953-1957	Lieutenant Governor
Montana	4	1945-1949-1953-1957	Lieutenant Governor
Nebraska	2	1947-1949-1951-1953	Lieutenant Governor
Nevada	4	1947-1951-1955-1959	Lieutenant Governor
New Hampshire	2	1947-1949-1951-1953	President of Senate
New Jersey *	3	1947-1950-1954-1958	President of Senate
New Mexico	2	1947-1949-1951-1953	Lieutenant Governor
New York	4	1947-1951-1955-1959	Lieutenant Governor

* Under the new constitution, the next governor will be elected for a 4-year term. The governor holding office in 1948 was elected under the old constitution, his term of office being 3 years.

Jurisdiction	*Term in Years*	*Terms Begin*	*Alternate*
North Carolina	4	1945-1949-1953-1957	Lieutenant Governor
North Dakota	2	1947-1949-1951-1953	Lieutenant Governor
Ohio	2	1947-1949-1951-1953	Lieutenant Governor
Oklahoma	4	1947-1951-1955-1959	Lieutenant Governor
Oregon	4	1947-1951-1955-1959	President of Senate
Pennsylvania	4	1947-1951-1955-1959	Lieutenant Governor
Rhode Island	2	1947-1949-1951-1953	Lieutenant Governor
South Carolina	4	1947-1951-1955-1959	Lieutenant Governor
South Dakota	2	1947-1949-1951-1953	Lieutenant Governor
Tennessee	2	1947-1949-1951-1953	Speaker of Senate
Texas	2	1947-1949-1951-1953	Lieutenant Governor
Utah	4	1945-1949-1953-1957	Secretary of State
Vermont	2	1947-1949-1951-1953	Lieutenant Governor
Virginia	4	1946-1950-1954-1958	Lieutenant Governor
Washington	4	1945-1949-1953-1957	Lieutenant Governor
West Virginia	4	1945-1949-1953-1957	President of Senate
Wisconsin	2	1947-1949-1951-1953	Lieutenant Governor
Wyoming	4	1947-1951-1955-1959	Secretary of State
United States	4	1945-1949-1953-1957	Vice President
Alaska	Indefinite		Appointed by President
Hawaii	4	1946-1950-1954-1958	Territorial Secretary
Puerto Rico	4	1949-1953-1957-1961	Appointed by President
Virgin Islands	Indefinite		Appointed by President

CHAPTER 5

LOCAL LAW MAKING BODIES

¶ 37. Political Subdivisions

Each state is subdivided into a number of counties, or parishes, as they are called in Louisiana. Within the counties may be townships, cities, towns, and villages. Counties do not normally have legislative powers but only executive and administrative ones. The legislature usually has no power to remove a county seat and it is only changed at a general election for that purpose. Characteristic county organization would include county commissioners who might be assigned to commissioner districts, the boundaries of which may be changed from time to time to include equal populations. Other county officers would include county clerk, recorder, sheriff, treasurer, and perhaps surveyor, assessor and coroner. In Montana the legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties and they may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government. Other political subdivisions include park districts, sewer districts, sanitary districts and school districts. These latter units may cut across municipal and other boundaries, pooling the needs and interests of the several local governments which they serve.

In order to determine the extent of local self-government, reference must be made to the constitution, statutes, and to charters which are in the nature of local "constitutions." The charter is usually prepared as a statute passed by the state legislature for each locality affected, subject to the state constitution and general statutes. Eighteen constitutions provide that municipal corporations are not to be created by special laws but through the provisions of general laws (Arizona, Alabama, Illinois, Iowa, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin, Wyoming). Arizona's constitution, one of the most recent, so specifies and makes the following provisions for home rule charters:

> "Any city containing, now or hereafter, a population of more than 3,500, may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the State, in the following manner: A board of freeholders composed of 14 qualified electors of said city may

be elected at large by the qualified electors thereof, at a general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city. Such proposed charter shall be signed in duplicate by the members of such board, or a majority of them, and filed, one copy of said proposed charter with the chief executive officer of such city and the other with the county recorder of the county in which said city shall be situated. Such proposed charter shall then be published in one or more newspapers published, and of general circulation, within said city for at least 21 days if in a daily paper, or in three consecutive issues if in a weekly paper, and the first publication shall be made within 20 days after the completion of the proposed charter. Within 30 days, and not earlier than 20 days, after such publication, said proposed charter shall be submitted to the vote of the qualified electors of said city at a general or special election.

"If a majority of such qualified electors voting thereon shall ratify such proposed charter, it shall thereupon be submitted to the Governor for his approval, and the Governor shall approve if it shall not be in conflict with this Constitution or with the laws of the State. Upon such approval said charter shall become the organic law of such city and supersede any charter then existing (and all amendments thereto), and all ordinances inconsistent with said new charter. A copy of such charter, certified by the chief executive officer, and authenticated by the seal, of such city, together with a statement similarly certified and authenticated setting forth the submission of such charter to the electors and its ratification by them, shall, after the approval of such charter by the Governor, be made in duplicate and filed, one copy in the office of the Secretary of State and the other in the archives of the city after being recorded in the office of said county recorder. Thereafter all courts shall take judicial notice of said charter.

"The charter so ratified may be amended by amendments proposed and submitted by the legislative authority of the city to the qualified electors thereof (or by petition as hereinafter provided), at a general or special election, and ratified by a majority of the qualified electors voting thereon and approved by the Governor, as herein provided, for the approval of the charter.

"An election of such board of freeholders may be called at any time by the legislative authority of any such city. Such election shall be called by the chief executive officer of any such city within ten days after there shall have been filed with him a petition demanding such election, signed by a number of qualified electors residing within such city equal

to twenty-five per centum of the total number of votes cast at the next preceding general municipal election. Such election shall be held not later than 30 days after the call therefor. At such election a vote shall be taken upon the question whether further proceedings toward adopting a charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceedings shall be had, and all proceedings up to the time of said election shall be of no effect.

"No municipal corporation shall ever grant, extend, or renew a franchise without the approval of a majority of the qualified electors residing within its corporate limits who shall vote thereon at a general or special election, and the legislative body of any such corporation shall submit any such matter for approval or disapproval to such electors at any general municipal election, or call a special election for such purpose at any time upon 30 days' notice. No franchise shall be granted, extended, or renewed for a longer time than twenty-five years.

"Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation.

"No grant, extension, or renewal of any franchise or other use of the streets, alleys or other public grounds, or ways, of any municipality shall divest the State or any of its subdivisions of its or their control and regulation of such use and enjoyment; nor shall the power to regulate charges for public services be surrendered, and no exclusive franchise shall ever be granted."

¶ 38. Governmental Forms and Customary Jurisdiction

The charters of cities, towns, and villages ordinarily have standard provisions setting forth the functions, of which education, health and safety are probably the most prominent, permitting the collection of taxes, the borrowing of money, the rendering of public local services, the condemnation of property for the public use, maintenance and repair of streets and roads, the administration of public schools and libraries in accordance with provisions and restrictions imposed by the general law of the state on matters of education, the enactment of local ordinances for the safety, protection, and well-being of the public, and police enforcement thereof. Sometimes these charters permit the city to engage in the business of public utilities. The charters limit the extent to which such local governments may incur indebtedness, provide for elections and the many steps for initiative and

referendum, particularly concerning fundamental matters of local government, the acquisition or relinquishment of local powers of government, extent of boundaries, consolidation of contiguous governments, etc. The right and duty of cities to finance themselves, and the extent to which they may do so, as distinguished from state aid is a subject of increasing importance in the preparation of city charters. From the elementary ad valorem taxes on real and personal property, and the revenue from license fees, local bodies have advanced so as to be permitted to seek more and more of their financing by means formerly the exclusive prerogative of their states, such as sales and income taxes.

Municipal governments are of several types. The majority of American cities are of the mayor-and-council type, which is similar to the governor-and-legislature type of state government. In this, the mayor, council and a school board are elected by the people. The mayor appoints department heads and maintains veto power over the council. In the commission form of government, besides a school board, the voters elect a varying number of commissioners, who act as heads of departments, and there is no council.

Another plan is called the City Manager Plan. The voters here elect a commission or council, which is the legislative body, and perhaps also a school board and controller. The commissioners in turn appoint one man as city manager, ideally without regard to his political beliefs and solely on the basis of his executive and administrative qualifications. He has wide powers and appoints department heads. The advocates of this plan claim ability to hire expert assistance of a high type. Subject to the approval of the commission, the city manager has broad power of action, and the appointment of department heads is relatively free from the defects of political spoils. He does not have veto power. The council or commission passes the law and the manager puts it into effect.

While it is manifestly impossible to cover any considerable number of municipal legislatures in detail, we have selected two of the principal cities, New York and Philadelphia, as examples of the prevalent system of municipal government in the larger cities.

NEW YORK CITY LEGISLATURE

¶ 39. General Provisions

In New York City, the legislative power is provided under the home rule law and the charter. Section 27 dealing in general with the extent of legislative power reads as follows:

"Any enumeration of powers in this charter shall not be held to limit the legislative power of the council except as in this charter specifically provided. The council in addition to all enumerated powers shall have power to adopt local laws as to it may seem meet, applicable throughout the whole city or only to specified portions thereof, which are not inconsistent with the provisions of this charter, or with the constitution or laws of the United States or of this state, for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants; and to effectuate the purposes and provisions of this charter or of the other laws relating to the city. The council shall have power to provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments."

While the legislative power is vested in the Council, both the mayor and the Board of Estimate act as checks against its prerogatives. Every local law or resolution certified by the clerk of the Council, after passing the Council, is presented to the mayor for his approval. No local law is approved by the mayor until a public hearing has been had on five days' notice and this hearing must be had within ten days after the local law is presented to him. If the mayor approves a local law or resolution, he signs it and returns it to the clerk. It is then considered adopted. If he disapproves it, he returns it to the clerk with his objections and the bill is then submitted to the Council at its next regular meeting. Within thirty days thereafter, the Council may reconsider the same and may repass it over his veto by a two-thirds vote. Only one vote is had upon such reconsideration. If, within thirty days after the hearing before the mayor upon a local law, or within thirty days after a resolution shall have been presented to him, the mayor shall neither approve nor return the local law or resolution to the clerk with his objections, it is then deemed to have been adopted as though he had signed it. At any time before the return of the local law or resolution by the mayor, the Council may recall it and reconsider its action.

¶ 40. Veto Powers of the Board of Estimate

A local law amending or repealing any provisions of the charter, or transferring or changing the powers and duties of, or conferring powers and duties upon, or prescribing the qualifica-

tions, number, mode of selection or removal, terms of office or compensation of officers or employees of the city or of any agency, or reducing or repealing taxes, fees or charges receivable by the city, or interest or penalties thereon, cannot become effective until first approved by the Board of Estimate. After such bills pass the Council, they are presented, duly certified, to the Board of Estimate for approval. If approved, they are then submitted to the mayor as in the preceding paragraph.

¶ 41. Referendum on Local Laws

Certain local laws must be submitted for the approval of the electors at the next general election held not less than sixty days after the adoption of the law and are operative only as prescribed therein when approved at such election by the affirmative vote of a majority of the qualified electors of the city. The subjects which must be thus submitted to referendum are those which:

1. Abolish or change the form or composition of the Council or Board of Estimate, or increase or decrease the number of votes which any member is entitled to cast.
2. Change the veto power of the mayor.
3. Change the law of succession to the mayoralty.
4. Abolish an elective office, or change the method of removing an elective officer, or change the term of or reduce the salary of an elective officer during his term of office.
5. Abolish, transfer or curtail any power of an elective officer.
6. Create a new elective office.
7. Change a provision of law relating to public utility franchises.
8. Change a provision of law relating to the membership or terms of office of the Municipal Civil Service Commission.
9. Reduce the salary of a city officer or employee which has been fixed by a state statute and approved by the vote of the qualified electors of the city; and no provision affecting such reductions contained in any local law or proposed new charter shall become effective unless the definite question with respect to the reduction of such salaries shall be separately submitted and approved by the affirmative vote of a majority of the qualified electors voting thereon.
10. Provide a new charter for the city.
11. Transfer powers vested by this charter in any agency, the head of which is appointed by the mayor, to another agency, the head of which is not so appointed, or vice versa.

12. Dispense with a provision of this charter requiring a public notice and hearing as a condition precedent to official action.

13. Dispense with a requirement of this charter for public bidding or for public letting of contracts.

14. Change a provision of this charter governing the classes or character of city bonds or other obligations, the purposes for which or the amount in which any class of obligations may be issued.

15. Change a provision of this charter relating to the audit of the city's accounts.

16. Remove restrictions in this charter on the sale, lease or other disposition of city property.

17. Curtail the powers of the City Planning Commission, or change the vote in the Board of Estimate required to take action without or contrary to the recommendation of the City Planning Commission.

18. Repeal or amend certain special enumerated sections of the charter.

¶ 42. Restrictions on Local Laws in New York City

Section 42 of the New York City charter reads as follows:

"All local laws shall be general, applying either throughout the whole city or throughout specified portions thereof.

"The council shall not pass any local law authorizing the placing or continuing of any encroachment or obstruction upon any street or sidewalk excepting temporary occupation thereof during and for the purpose of the erection, repairing or demolition of a building on a lot abutting thereon under revocable licenses therefor, and excepting the erection of booths, stands, or displays or the maintenance of sidewalk cafes under licenses to be granted only with the consent of the owner of the premises if the same shall be located in whole or in part within stoop lines.

"All local laws in relation to licenses shall fix the license fees to be paid, if any, and shall provide that all licenses shall be according to an established form and shall be regularly numbered and duly registered."

¶ 43. The Board of Estimate

The Board of Estimate under the charter of the City of New York exercises all the powers vested in the city "except as otherwise provided by law." It is composed of the mayor, the comptroller, president of the council and the presidents of the

boroughs of Manhattan, Brooklyn, Bronx, Queens and Richmond. Under the Board of Estimate there are bureaus of the secretary, of franchise, of engineering, of real estate, of retirement and pensions. The secretary of the Board is appointed and may be removed at the pleasure of the Board. The heads of other bureaus are members of the classified civil service and are appointed by the Board. The head of each bureau performs such duties as may be conferred upon him by the Board or by law and has powers of the head of a department in respect to the organization of the bureau and its officers and employees. The Board fixes the salary of every officer or person whose compensation is paid from the city treasury other than day laborers, except as otherwise provided in the charter or by statutes. It has power to create, abolish or modify positions and grades of persons paid from the city treasury. The Board has power, with the approval of the mayor, to assign to use for any public purposes any city property, for whatever purpose originally acquired, which it may find to be no longer required for such purpose, and it may assign space in any city building to any agency. The Board is also the head of the New York City employees' retirement system. It will thus be seen that the resemblance of the Board of Estimate to the upper house of the state legislature is very slight except in the respects enumerated in the first part of this paragraph.

PHILADELPHIA LEGISLATURE

¶ 44. General Provisions

The government of the city of Philadelphia operates under an act "For the better government of cities of the first class of the Commonwealth of Pennsylvania" approved June 25, 1919, and amendments thereto. Under Article XVI of that act, the legislative branch of the government is vested in a city Council. City councilmen are elected in the various state senatorial districts. The number of councilmen so elected is fixed at twenty-two. The ratio for the election of councilmen is ascertained by dividing the whole population of all the state's senatorial districts in Philadelphia by twenty-two. One councilman is elected for each such ratio and an additional councilman for any fractional portion of such ratio in excess of 50%. Councilmen serve for a period of four years from the first Monday in January following their election and receive $5,000 per annum. The Council meets at 10 A. M. on the first Monday of January following its election. It has the power to provide for its own organization and for the employment and remuneration of such persons as are necessary to

discharge its business. These powers are under the control of the president of the Council. No ordinance is passed except by bill, and the rules contain an anti-bobtailing provision that no bill shall be so altered or amended during its passage as to change its original purpose. Bills are not considered until they are first referred to a committee, returned and then printed for the use of members. Amendments are also printed before the final vote is taken on the bill. No bill becomes an ordinance upon the same day on which it was introduced or reported. On its final passage, the vote is taken by yeas and nays and the names of the councilmen voting for and against the bill are entered in the journal.

A majority of all councilmen elected are required to pass a bill, and a majority of all elected constitute a quorum. After passing the Council, bills are submitted to the mayor for his approval or disapproval. There is no compulsory provision for hearings before the mayor as in New York City. If the mayor fails to return the bill at the first meeting held not less than ten days after he received it, it becomes law without his approval. If returned with his veto, the Council may then repass it within seven days by a three-fifths vote. As in many states, the mayor may disapprove or reduce any item or items of any ordinance making appropriations, and the part or parts of the ordinance approved become law while the item or items disapproved of do not become law unless repassed by the Council as in the case of other vetoes.

¶ 45. Taxation

Every year on or before the fifteenth day of October, the mayor of Philadelphia submits a statement of estimated receipts other than from taxation, including money proposed to be borrowed, and liabilities of every kind for the ensuing calendar year and all other necessary expenditures to be met out of the proceeds of taxes to be levied by the Council, together with a statement of the average proportion of taxes uncollected at the end of each of the three preceding years. Immediately after receipt of such statement, the Council may consider the same in open session, affording a reasonable opportunity for hearings, and in one ordinance before the fifteenth of December following must adopt a financial program for the ensuing year. On or before the same date, the Council must levy and fix a tax rate for the ensuing year which, together with the estimated receipts from all other sources, except borrowed money, will yield sufficient receipts to meet the liabilities of the city of every kind except those paid out of loan

funds, and current expenditures. If the Council fails to fix a tax rate on or before the fifteenth day of December of any year, the rate for the current year is the rate for the ensuing year as if it had been fixed by the Council.

¶ 46. Rules

The rules of the Philadelphia Council are similar to those of state legislative bodies. The time of meeting is fixed for every Thursday at 2 P. M. except on holidays, when the meeting takes place on the day following that day at the same hour. The chairman of the Council is designated "president." He may call special meetings of the Council whenever in his opinion the public business requires and also whenever five members of the Council make written request therefor. The subjects to be considered at the meeting are specified in the call. A president pro tempore may be elected until the arrival of the president when he is not present at the hour fixed for a meeting, or may be appointed by the president to act in his absence. The clerk prepares and has printed or typewritten, before each meeting, a calendar showing the matters pending in the Council which are in order for consideration at such meetings. All bills or resolutions reported from committee with a favorable report are placed on the calendar in the order in which they are reported.

The president is elected for the full term of the Council by vote of the majority of all the members elected and his duties are similar to those of the presiding officer of state legislative bodies. He votes on all questions but his vote is taken last in order. He has the power to appoint all standing committees for the term of the Council and fills vacancies in such committees. He also appoints special committees unless otherwise ordered by a two-thirds vote of the members present. He is ex officio member of every committee. Except for the clerk of the Council and the sergeant-at-arms, he appoints and dismisses in his discretion, all other employees.

¶ 47. Committees

The following standing committees are designated for the Philadelphia City Council:

Finance	City Planning and Zoning
Public Works	Law and Municipal and
City Property and Service	County Government
Lighting	Public Safety

Public Health	Transportation and Public Utilities
Public Welfare	Celebrations
Commerce and Navigation	Parks and Parkways

Committees may arrange to hold stated meetings at such times as do not conflict with the meetings of other committees and of the Council. The chairman or, in his absence, the member of the committee next in order of appointment, makes the committee report and, if no report is made, assigns the reason for failure to make one. At the first stated meeting of each calendar month, the chairman of each committee, if required by the Council, must make a detailed report in writing of all bills and resolutions referred to his committee which have not at that time been reported back to the Council. In this report he may be required to state the reasons for failure to release the bills and the probable date when each unreported bill or resolution will be reported back to the Council. In case there is undue delay in making such report, a majority of all the members elected to the Council may order any bill returned and either referred to another committee or to the committee of the whole.

¶ 48. Bills

All bills before final passage are read in full. Every bill is read at length on three different days in open meeting. The first reading is upon the day it is reported to the Council. It is then laid over to be printed. At the next meeting it is read in full a second time and is then open for debate or amendment. At the following meeting it is considered section by section and is open for further debate or amendment. It is then placed upon final passage. In case of emergencies, the rule providing for three readings may be amended to permit passage upon two readings, the first on the day it is reported and the second at the following meeting.

¶ 49. Reconsideration

Members who voted in the majority only, or those who voted in the negative, when the Council was equally divided, or when a bill failed for want of votes required, may move reconsideration of any question or vote which has been determined. No motion for reconsideration is received unless made on or before the next stated meeting of the Council. On motion to reconsider, a member may speak only once.

¶ 50. Miscellaneous

The Council has power to compel the attendance of witnesses and the production of documents and other evidence at any meeting of the body or any of its committees and for that purpose may issue subpoenas and attachments in any case of inquiry, investigation or impeachment. Failure to appear may be the basis of a proceeding in the Court of Common Pleas.

PART II

THE STATE AND FEDERAL LEGISLATURES, ORGANIZATION AND SESSIONS

CHAPTER 6

STRUCTURE OF LEGISLATURES

¶ 51. Establishment—Powers and Functions of the Legislature

Representative bodies with legislative powers are established by the Constitution of the United States, and by the constitutions of all the states, and by the laws governing the administration of Hawaii, Alaska and Puerto Rico. Article I, Section 1, of the United States Constitution provides that:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Similar provisions exist in all of the above-named jurisdictions except Nebraska. In Nebraska alone of the states and territories of the United States, there is only one house denominated "the Legislature," the members of which are elected on a nonpartisan ballot. Legislative power is the right to initiate or amend statutes, subject to the part which the governor plays in approving bills, and including the functions of the electorate wherever the initiative or referendum exists.

¶ 52. Extra Legislative Powers

Beside the power to legislate, the state legislatures perform certain other functions. The Delaware constitution contains an example of the usual provisions in the state and federal constitutions relative to the power of impeachment, as follows:

> "The House of Representatives shall have the sole power of impeaching; but two-thirds of all the members must concur in an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to the evidence. No person shall be convicted without the concurrence of two-thirds of all the senators.

"On the trial of an impeachment against the Governor or Lieutenant-Governor, the chief justice, or, in case of his absence or disability, the chancellor shall preside; and on the trial of all other impeachments the President of the Senate shall preside."

The senate also approves executive appointments; and both legislative bodies may act through committees as investigators of conditions throughout the state.

¶ 53. Bicameral and Unicameral Legislatures

In Canada most of the provincial legislatures are unicameral. In the United States, as we have seen, Nebraska's is the only one. The tradition of two houses to a legislature is ancient, but the reasons are not as valid today as they once may have been. From the standpoint of representation of different interests, the lower house of other governments, past and present, would normally represent the common people, or the less privileged class. The upper house would represent royalty, the aristocracy or the more privileged class. In the American federal government, the senators represent the state as a whole, rather than any groups of its citizens, and before the adoption of the seventeenth amendment, were elected by the legislatures. In the states, no general rule can be applied. The different lengths of the terms of office and the system of over-lapping terms, under which two-thirds of the senate always has at least two or four years' experience as such, render the senate to some extent a more experienced and conservative body, which is thus supposed to act as a check and balance against the lower house; but aside from this, all that can be said definitely as between the two houses is that there are always fewer senators than representatives; that the latter usually represent individuals, the former, areas. The distinction might have been between rural and urban interests. Thus, if each senator represents a county, while each representative acts on behalf of a certain number of citizens, the house of representatives ought normally to be composed largely of urban members, while in the senate the power of the rural sections would predominate.

The basic rule for both senators and representatives is that each shall act for approximately the same population.[1] If this were strictly observed, there would, of course, be popular government by the majority of the people through their representatives. But in the senate, country areas usually have a larger representation,

[1] Legislative Processes National and State by Joseph P. Chamberlain, page 25.

and the tendency in nearly all states is to give rural sections in both houses greater power than warranted by the number of their inhabitants. This is accomplished in two ways: First, there is frequently (and contrary to some constitutional provisions requiring districts to be so constituted as to contain an approximately equal number of inhabitants), a greater difference between the population of various districts, and secondly, the constitution frequently provides for representation by counties or districts, the more populous not being allotted more than a given maximum number of representatives or senators commensurate with the greater population. With the functions of the two houses so obscure, it is no wonder that there is so little effective argument against the movement to reduce each legislature to one house as has already been accomplished in Nebraska.

¶ 54. Terminology for Legislative Branches

Either branch of the legislature may be referred to as a "house" when it is not necessary to indicate either branch specifically, or when the house is not certain. Thus, the "first house" means the house of introduction and may be either the senate or the house of representatives. The word "house" has a secondary meaning applying only to the lower house, and the context of the sentence must indicate which is meant. The term "lower house" is a historical figure of speech and never an official designation; though the forms "sent down" and "sent up" still exist in many states and mean, respectively, delivered from the senate to the house, or from the house to the senate. But when the term "lower house" is used, it refers to the most numerous branch of the legislature, or "popular" branch. It is generally officially called the house of representatives, but in Wisconsin, California, Nevada, New Jersey and New York it is called the assembly; in Maryland, West Virginia and Virginia, it is called the house of delegates. The "upper house" is always officially called the senate. The single house of Nebraska is officially just the "Legislature" but a custom seems to prevail among its members to call each other "senator." Both branches taken together are variously called the legislature, the general assembly, the general court and the legislative assembly.

¶ 55. The Lower House

There are 435 members in the federal House of Representatives. These are elected for a two year term. They must be 25 years of age, have been seven years a citizen of the United States

and an inhabitant of the state from which they were chosen. Similar qualifications as to citizenship and age apply in the various states. There is usually a difference in the minimum age as between the two houses, and where this is so, the minimum age for the house of representatives is lower than that for the senate. The lower house of each state is referred to in the federal Constitution as "the most numerous branch of the legislature." There is always a larger number of members of the lower house. The smallest ratio is that of Idaho, forty-four for the senate and fifty-nine for the house, and the greatest ratio is New Hampshire, twenty-four for the senate and 400 for the house. Delaware has the smallest number of representatives, thirty-five, and New Hampshire, though it recently amended its laws to restrict the number of representatives, still has the largest number. The average number of representatives in each state is 118. The term of office of state representatives is usually two years.

¶ 56. The Senate

There are ninety-six senators in Congress (two from each state) elected for a term of six years. They are required to be 30 years of age and must have been nine years a citizen of the United States and an inhabitant of the state from which chosen. In each state there is an average of thirty-six senators varying from seventeen in Nevada to fifty-four in Georgia. Nebraska has forty-three members in its single house. The term of office of state senators is usually four years. Theoretically, they represent a political area rather than a number of persons. Their terms of office in many states, and in the federal government, are so arranged that the whole body is not up for reelection at the same time, so that even in an election in which no senators would be returned to office, there would always be a number of (half or two-thirds) experienced members left. This factor, the higher age limit and the longer term, all contribute to the greater dignity, and more or less conservative and more experienced character of the "upper branch."

¶ 57. Legislative Officials

Each branch of the legislature has a presiding officer and an alternate presiding officer, a secretary, clerks, sergeant-at-arms, stenographers, pages, and other miscellaneous employees. These are appointed or elected pursuant to the rules of the various legislatures as will be described below.

¶ 58. Presiding Officers

Each house of the legislature has an officer to act in the capacity of president of that body. His duties are set forth in ¶ 96 infra. He does not customarily take part in debates, and in most states he does not cast a vote except to make or break a tie, complete a two-thirds vote, or to fill a quorum. It is sometimes provided that he may take part in debates in committee of the whole and vote there. But a vote in committee of the whole does not effect the passage of a bill, and his right does not extend, by reason of that provision alone, to taking part in final passage.[2] Though subject to the will of the house of the whole, he exercises important power. The name of this officer in the senate of every state in the United States, except Tennessee, is the *president*. In Tennessee he is called the *speaker*. In the lower house, the name of the presiding officer is universally the *speaker*.

In parliamentary language, regardless of the official title of the presiding officer, he is referred to as "the chair." This makes, so to speak, the rightful occupant of that piece of furniture the authority rather than any one particular man. In committees and certain other assemblies, he is also referred to as "the chairman" but this term is not used for the presiding officer of the assembly or senate. It is customary for the occupant of the chair to refer to himself in the third person as "the chair" and for members of the legislature from the floor to refer to him as "Mr. Speaker" or "Mr. President." In committees, the committee head is referred to as "Mr. Chairman." Where the presiding officer is elected, it is always by an absolute majority.[3]

Considerable political importance attaches to the post of presiding officer. He influences the course of legislation, and even, to a certain extent, the political futures of the legislators, in various ways. He frequently has the power, as in the California rule (cited in ¶ 96) to appoint standing, conference and special committees, and sometimes their chairmen. Certain committees regularly consider legislation of great state-wide interest, and appointment to such committees, especially chairmanship, is important to the people of the state, the political party and to the legislators so appointed. He is often an ex officio member of rules, sifting and steering committees which control legislation brought before the house. It is sometimes within the power of the presiding officer to designate the committee to which a bill shall be referred. This

[2] Kelly v. Secretary of State, 149 Mich. 343, 112 N. W. 978.

[3] Cushing's Manual of Parliamentary Practice, revision of Albert S. Bolles, page 33.

power has value. It does not follow as a matter of course that there is only one possible committee to which a public measure may be referred; there is often opportunity for such presiding officer to exercise judgment, and there are times when reference of a bill to one committee rather than another may determine its fate. The power to recognize or ignore members seeking to make motions, more particularly in Congress, is an important one under certain conditions. Rules on points of order, and in general the conduct of proceedings, all make this office a coveted post. It is the duty of the presiding officers to attest with their signature the passage of bills in both houses (see ¶ 210).

¶ 59. The President of the Senate

The Vice-President of the United States is by virtue of the provisions of the Constitution (Article I, Section 3), president of the Senate. In most states, the lieutenant-governor holds this position ex officio, but the president of the senate is elected by the senate itself in thirteen states, namely, Arizona, Arkansas, Florida, Georgia, Maine, Maryland, Michigan, New Hampshire, New Jersey, Oregon, Tennessee (speaker), Utah and Wyoming. In the lieutenant-governor states, Minnesota is typical and makes the following provision in its constitution (Article V, Sec. 15):

> "The Lieutenant-Governor shall be ex officio president of the Senate, and in case a vacancy should occur, from any cause whatever, in the office of Governor, he shall be Governor during such vacancy. The compensation of Lieutenant-Governor shall be double the compensation of a State senator. Before the close of each session of the Senate, they shall elect a president pro tempore, who shall be Lieutenant-Governor in case a vacancy should occur in that office."

In New Hampshire the constitution merely says:

> "The senate shall appoint their president, and other officers, and determine their own rules of proceedings."

¶ 60. The Speaker

The title of this office arises from the fact that he is the official to whom and through whom the members of the assembly speak. A corresponding term of Latin derivation in ecclesiastical law, and an appellation used by the House of Lords in England is "prolocutor." "Speaker" is universal in the United States. Although his duties are essentially no different from those of the president of the senate, he is elected by the house membership.

¶ 61. Alternate Presiding Officers

The senate elects a president pro tempore to act in the absence of the principal official. This is also the practice in many of the lower houses. In nearly all states, however, temporary speakers or presidents may be called to the chair and they serve only until adjournment that day. The Speaker of the House of Representatives of the United States may appoint a substitute for short periods of absence with the approval of the House. If he fails to make such an appointment, the House itself will elect a speaker pro tempore.

¶ 62. Political Responsibility

Where the presiding officer of the senate is a man elected by the people, he does not, of course, necessarily represent the majority party of the senate, and in such cases he can, to some extent, balance or nullify party power there. The senate, however, usually elects its own president pro tempore who is a member of the political party of the majority of that body. Acting in the absence of the president, he exercises all the president's powers and even sometimes powers not allowed to the president. Thus, in Connecticut and New York, the president pro tempore, and not the lieutenant-governor, has the power to appoint committees.

¶ 63. Appointment of Committee Chairmen

As a general rule, the committee chairmen are appointed by the same power which appoints entire committees. Occasionally each committee elects its own chairman. Where appointments are made, it is usual to designate as chairman that member of the majority party who has had the longest uninterrupted service in that branch of the legislature. As this is an important post, the appointments may not be made arbitrarily where the power of appointment resides in the presiding officer. Both in naming members to committees and in appointing their chairmen, the appointing official exercises a function important to the members appointed and to their party. Often such appointments are made to fulfill a campaign promise of the speaker; but fitness for the post, seniority, fairness and party solidarity and loyalty must all be given serious consideration if the job is to be done effectively.

¶ 64. Other Legislative Officials

Each legislative body has a sergeant-at-arms, who polices the assembly, arrests and corrals absent members, and sometimes

assists in the custody and distribution of public documents, stationery, etc. Each house also maintains officials whose duties are to keep the records of the proceedings, the votes taken, read the journals, and perform the duties of three readings usually required by the constitution for bills and resolutions and to deliver messages to the opposite house, as well as bills passed. These functions may be assigned to officials designated as secretary, clerk or chief clerk. They usually have several assistants which may include a journal clerk, a docket clerk or an assistant clerk to supervise or take over part or all of one or more of the foregoing duties. A doorkeeper may act as a kind of assistant of the sergeant-at-arms with the specific duty of seeing that no person is admitted to the floor of the house except as provided by its rules. Some legislatures also provide for a postmaster, an official stenographer, pages and other miscellaneous employees. The following selections from the rules of various states describe the duties of some of these officials:

In California the *sergeant-at-arms* is required—

"(a) To attend the Assembly during its session, preserve order, announce all official messengers, and serve all process issued by authority of the Assembly and directed by the Speaker; he shall receive his actual expenses for himself or for an assistant when executing any such process.

"(b) To see that no person is admitted to the Assembly Chamber except in accordance with the provisions of these Rules.

"(c) To have general supervision over the Assistant Sergeants-at-Arms and be responsible for their official acts and their performance of and regular attendance upon their duties.

"(d) To suspend temporarily any Assistant Sergeant-at-Arms for incompetency or dereliction of duty, pending action by the Committee on Rules and House Functions.

"(e) To execute all commands of the Speaker.

"(f) To perform all other duties pertaining to his office as prescribed by law or Assembly rule."

In the Colorado House the *assistant sergeant-at-arms* is required to

"superintend the post office kept for the accommodation of the members and officers of the house, and be held responsible for the prompt and safe delivery of their mail, and in general perform such other duties as may be directed by the sergeant-at-arms."

The extensive duties of the *secretary* of the Senate of Mississippi are set forth in rules 9, 11, 12, 13 and 14 as follows:

"9. The secretary of the Senate shall keep a correct journal of the proceedings of the Senate as provided in Section 5122 of the code of 1930. A brief statement of the contents of Resolutions, petitions, memorials or other papers presented to the Senate and the proceedings relating thereto, every vote of the Senate, and the signing of every Bill by the president shall be entered upon the journal."

"11. The secretary shall prepare and cause to be posted each day a calendar of matters in order for consideration, a list of matters lying on the table, and such matters or memoranda as may be deemed necessary and the Senate or president may direct. Such calendar shall clearly indicate the subject matter of every Bill and Resolution placed thereon, and mimeographed copies of such Bills and Resolutions on the calendar shall be made available and distributed to the members of the Senate.

"12. The secretary shall retain all Bills, Resolutions, or other papers in reference to which any senator has a right to move a reconsideration until the right of reconsideration has expired. This rule shall not apply when unanimous consent of the Senate shall be given to the secretary to immediately transmit any such Bill or Resolution to the House of Representatives.

"13. The secretary shall insert, in an appendix to the journal, the rules of the Senate and the joint rules of the two branches.

"14. The secretary shall be required to keep separate and distinct books of the proceedings of the Senate when in executive session."

In Rhode Island, the secretary of state is automatically secretary of the senate, under the constitution.

The *chief clerk's* duties in Wisconsin are set forth in rule 6 as follows:

"He shall superintend the recording of the journals of the proceedings; the engrossing and enrolling of bills, resolutions, etc.; shall cause to be kept and prepared for the printer the daily journal of the proceedings. He shall permit no records or papers belonging to the legislature to be taken out of his custody otherwise than in the regular course of business; shall report any missing papers to the notice of the presiding officer, and generally shall perform, under the direction of the presiding officer, all duties pertaining to his office as clerk, and shall be responsible for all the official acts of his assistants. The general clerk shall be assistant chief

clerk and shall have general supervision under the direction of the chief clerk and in his absence shall have all of the powers and duties of the chief clerk."

In Massachusetts, the duties of the *clerk* are more extensive as set forth in senate rules 6 to 9:

"6. The Clerk shall keep a journal of the proceedings of the Senate, and shall cause the same to be printed daily. He shall, in the journal, make note of all questions of order, and enter at length the decisions thereon. He shall insert in an appendix to the journal the rules of the Senate and the joint rules of the two branches.

"7. The Clerk shall prepare and cause to be printed each day a calendar of matters in order for consideration; and shall include on Mondays and on such other days as he shall deem necessary a list of matters lying on the table; and such other memoranda as he may deem necessary, and as the Senate or the President may direct.

"8. The Clerk shall retain bills and other papers, in reference to which any member has a right to move a reconsideration (except petitions, bills and resolves introduced on leave, orders, reports of committees asking to be discharged from the further consideration of a subject, matters which have been recommitted under Joint Rule 5 and engrossed bills and resolves) until the right of reconsideration has expired.

"9. When a bill or resolve coming from the other branch does not appear in print in the form in which it was passed in that branch, the Clerk shall either indicate the amendments on the Orders of the Day, or shall have the bill or resolve reprinted, at his discretion."

The duties of the *doorkeeper* are given in Oregon House Rules 65 and 66 as follows:

"The duty of the doorkeeper shall be to give notice to the house members of all messages; to carry all messages the house members may require—private as well as public; and perform such other duties as may be required by the speaker.

"It shall be the duty of the doorkeeper to attend the house during the sessions; to assist in keeping the representatives' hall in order; in all things to execute the commands of the speaker of the house from time to time."

¶ 65. Committees

A committee is a body of men selected from the branch creating it to give consideration to a specified matter or matters, or to perform specific functions assigned to it. The principal

classification of committees is between select and standing. The former usually have a definite and temporary purpose. For instance, to announce to the governor that the legislature is in session and awaits his communication; or to amend a bill in a manner previously agreed upon, etc. Standing committees are those which are designated to give consideration and make recommendations on all matters of a specified nature as insurance, banking, corporations, taxation, etc. The committee is a tool for the expeditious transaction of business. The average state legislative session introduces and considers fifteen hundred bills, and Congress, in its two year life, ten thousand. Obviously no legislator can give serious study to more than a small fraction of these measures and he must therefore rely upon the study and recommendations of others. Bills are sorted by the official having power of reference, according to the subjects designated by the committee names, and are referred for consideration to such committees respectively. A typical list of committees, together with the type of subject which they are required to consider, or the work which they are to perform in connection with the legislative processes, is set forth in the Missouri House rules as follows:

"(1) The Committee on Accounts shall superintend and control the contingent expenses of the House, and audit all accounts and other allowances and report the same to the Chief Clerk.

"(2) The Committee on Agriculture shall take into consideration all such petitions, propositions, matters and things as shall be referred to them by the House, touching agriculture and the improvement thereof, and report their opinion thereon, together with such bills and propositions for the protection and encouragement of agriculture within this state as they may deem expedient.

"(3) The Committee on Appropriations shall report upon all bills, measures and questions referred to it pertaining to the appropriation and disbursement of public money.

"(4) The Committee on Aviation shall consider all bills pertaining to aviation, airports, regulation of aviation and other matters pertaining to aircraft and aviation business.

"(5) The Committee on Banks and Banking shall consider all questions and report upon all bills relating to banks and banking.

"(6) The Committee on Bills Agreed To and Finally Passed shall carefully examine the typed copy thereof and compare each bill agreed to and passed with the perfected bill, correct the clerical errors, if any, and return the bill, to the Chief

Clerk of the House, with the words 'Agreed To and Finally Passed' endorsed thereon.

"(7) The Committee on Bills to Be Perfected and Printed shall direct the printing of all bills ordered perfected and printed, and see that all amendments to every such bill are incorporated therein before the bill is printed, and certify to the House that the printed copies of such bill on the desks of the members, are true and correct copies of the bill as ordered perfected and printed. Said committee shall also direct the work of its clerk, and his assistants.

"(8) The Savings and Loan Committee shall consider all questions and report upon all bills relating to savings and loan and kindred associations.

"(9) The Committee on Children's Code shall consider and report upon all bills referred to it relating to the welfare of delinquent and neglected children.

"(10) The Committee on Civil and Criminal Procedure shall consider and report upon such questions relating to civil or criminal procedure as may be referred to it by the House.

"(11) The Committee on Commerce shall consider all matters referred to it pertaining to commercial pursuits, trade, manufacturing, financial and general economic advancement of the State and advise and report the proper ways and means to promote the growth of the commercial, industrial and financial interests of the State and matters pertaining thereto.

"(12) The Committee on Constitutional Amendments shall consider and report upon all proposed amendments to the Constitution of Missouri.

"(13) The Committee on Criminal Jurisprudence shall consider and report all questions relating to criminal laws referred to it by the House and examine the said laws and report measures for their better enforcement.

"(14) The Committee on Criminal Justice and Costs shall consider and report upon all bills relating to the revision and reform of criminal laws and criminal procedure, and all bills relating to costs in criminal cases and the fees pertaining to the same, and adopt and report such measures as will lessen the expenditures of the State and counties in enforcement of the criminal code of this State.

"(15) The Committee on Education shall consider and report upon all questions relating to education, public schools, school funds and school lands.

"(16) The Committee on Elections shall examine all laws relating to elections, and report such alterations and amendments, and take into consideration all petitions and other matters relating to elections.

"(17) The Committee on Eleemosynary Institutions shall consider and report upon all matters referred to it relating to state hospitals, institutions for the education of the deaf and dumb and blind, and all other charitable institutions.

"(18) The Committee on Employees and Clerical Force shall have control of the employees of the House, assign the various members thereof to their proper station, shall have the right to transfer any of the said employees from one station to another whenever they consider it necessary, and shall consider and report on all matters relating to the House employees referred to it. Provided that this paragraph 18 of Rule 39 shall not apply to any employee appointed by or assigned, while so assigned to the Speaker, the Majority Floor Leader, the Chairman of the Committee on Accounts, The Chairman of the Committee on Appropriations, or to any elective officer of the House.

"(19) The Committee on Flood Control and Soil Conservation shall consider and report upon all matters relating to the control of flood waters, and levees; swamp lands and lands subject to overflow, and redemption, drainage and protection of such lands; and the conservation of soil and other natural resources other than forestry, fish and game.

"(20) The Committee on Forestry, Fish and Game shall consider and report upon all bills and matters referred to it relating to forestry, fish and game.

"(21) The Committee on Governmental Organization and Related Matters shall consider and report upon all matters relating to the reorganization, consolidation and abolition of boards, bureaus, commissions and all other offices and departments of state, county and township governments; public buildings of the state, including the Division of Public Buildings and the capitol grounds; and state libraries and the legislative library.

"(22) The Committee on Insurance shall examine and report upon all bills referred to it in relation to all kinds of insurance and suggest such measures as may add to the efficiency of the Insurance Department and the improvement of the insurance laws.

"(23) The Committee on Judiciary shall consider and report upon all questions relating to the judicial department of the State, to inferior courts and to probate law.

"(24) The Committee on Labor shall consider and report upon all matters referred to it pertaining to the conditions and interest of labor.

"(25) The Committee on Military Affairs shall consider and report upon all matters referred to it relating to military and naval affairs of the state.

"(26) The Committee on Mines and Mining shall examine all matters referred to it in relation to mines and mining and suggest such measures as will assist in the development of the mineral resources of the state.

"(27) The Committee on Resolutions and Miscellaneous Business shall consider and report on resolutions and miscellaneous bills and other business referred to it.

"(28) The Committee on Municipal Corporations shall consider and report upon all matters pertaining to the organization, government and improvement of cities, towns and villages and all questions concerning municipal bodies.

"(29) The Committee on Penal Institutions and Probation and Parole shall examine and report upon all matters relating to the penitentiary and other penal institutions of the State; and relating to probations and paroles.

"(30) The Committee on Pensions shall consider and report upon all matters relating to pensions.

"(31) The Committee on Printing shall consider and report upon all matters and propositions for printing or relating to the same, including the reports from the heads of the departments and of the joint committee of both Houses.

"(32) The Committee on Private Corporations shall consider and report upon all bills and matters relating to private corporations.

"(33) The Committee on Public Health shall examine and report upon all matters referred to it in relation to the scientific institutions of the State, and all of the matters effecting the public health and the sanitary condition of the State.

"(34) The duties of the Committee on Purchasing Supplies shall be to make all purchases of supplies for the use of the House and its clerical force except as otherwise provided by law.

"(35) The Committee on Redistricting shall consider and report on all bills relating to the congressional redistricting of the State.

"(36) The Committee on Roads and Highways shall consider and report upon all matters relating to roads, highways, bridges, and ferries.

"(37) The Committee on Rooms shall have charge of the assigning of rooms and their equipment for the use of officers, committees, members and employees of the House.

"(38) The Committee on Rules and Joint Rules shall formulate and present for consideration the rules of the

House; and shall consider and report upon all propositions to amend or change the rules, to which committee they may be referred without debate and shall have the privilege of reporting at any time, and the consideration of their report shall have precedence of all other business.

"(39) The Committee on Social Security shall consider and report upon all matters referred to it relating to Social Security, Children's Aid, and Old Age Assistance, and such other matters pertaining to similar subjects effected by Federal Legislation.

"(40) The Committee on State Property shall consider and report upon all bills relating to state property.

"(41) The Committee on Taxation and Revenue shall consider and report on all bills pertaining to the administration of taxation and revenue laws.

"(42) The Committee on Teachers Colleges and School of Mines shall consider and report upon all matters relating to State Teachers Colleges and the Missouri School of Mines.

"(43) The Committee on Transportation shall consider and report upon all bills referred to it relating to transportation.

"(44) The Committee on University shall consider and report upon all bills referred to it relating to the State University.

"(45) The Committee on Ways and Means shall examine and report on all questions referred to it relating to the revenue and public debts of the State, and the interest thereon. Said Committee shall also inquire into and suggest to the House such changes, if any, as should be made in respect to existing sources of revenue, and such new sources of revenue, if any, as in the judgment of the committee should be considered by the House.

"(46) The Committee on Workmen's Compensation shall consider and report upon such questions relating to Workmen's Compensation acts as may be referred to it by the House.

"(47) The Committee on Time and Place of Meetings shall determine and designate the time and place of the meetings of all standing committees."

It should be noted that sometimes a certain committee may, by tacit understanding, be a "graveyard." Bills referred to such a committee have little or no chance of leaving the committee alive. In Arizona, each bill is regularly considered by more than one committee (see ¶ 167).

¶ 66. Limitation of Power—Committees on Committees

Limitation of the political powers of the presiding officers is further accomplished in the Nebraska, North Dakota and Minnesota senates by creation of a committee on committees, which has the power of making all standing committee appointments. Similarly named committees in Utah and Maine have the power of referring bills to standing committees, subject, in Maine, to the approval of each house. Minnesota delegates the power of committee appointments to an organization committee, but the Senate committee on committees makes new appointments after organization. Nine states and the federal Senate provide for the direct appointment of committees by the houses themselves.

¶ 67. Congressional and State Committees Compared

The congressional committee is somewhat closer to a permanent and more steadily functioning body than the state committee. Higher compensation permits the devotion of all the congressman's time to the business of legislation, and this and the frequency and length of congressional sessions inevitably result in better study, training, knowledge. The state legislator must carry on a separate business or profession if he has no other independent means of income, and meeting in regular session, as all but five do, only once in two years, and often for a restricted period, state committees cannot hope to approach the efficiency and competency of the committees of the federal legislature. Thus, the congressional House Ways and Means Committee is an organized body of men, the leaders of which are veterans in tax legislation who have listened to incredibly voluminous testimony on taxation and have probably acquired more theoretical and practical knowledge of the subject than any state legislator. The federal Senate Foreign Relations Committee is infinitely more than just a body of men selected for some aptitude in international affairs. Whatever an opposition party may think of any one of them, they are, or have unlimited opportunity to become, informed career statesmen. In short, the congressional committee, though composed of a membership more or less in flux at every election, is, or has every chance to be, a body of experts on its subject, while state committees in general are temporary aggregations.

¶ 68. Fitness for Committee Membership

Ideally, the members appointed to the various committees ought to be fitted by occupation, education or experience to con-

sider bills on the subjects for which the committees are named. There should be at least a few practical or theoretical farmers on the agriculture committee, and a man with insurance experience on the committee of that name, and so on. And in fact this is usually so. It is more important in the states that membership consist of practical men already informed on the subjects they are to consider, than in Congress where even an uninformed member has a better chance to learn.

¶ 69. Committee Chairmen

The chairman of a committee is or should be much more than a regulator of orderly procedure. He holds an important political office. It is through the chairman that hearings must be arranged in those states where they are not posted automatically for all bills. In such states there is virtually no means of arranging a hearing without his consent. The committee chairman is often the sponsor and advocate of bills reported favorably by his committee. His influence may be responsible for preferred consideration of such bills and he may thus influence the course of legislation by his efforts, or lack of them, in obtaining special rules, calling up a bill, or otherwise furthering its progress. In conference committees, the committee chairman is often the leader of the conferees for his house. In Congress, the leadership of the committee chairman is more marked than in many of the states. There, too, it is his privilege to ask for special rules for preference and preferred consideration to what is called in Congress "Calendar Wednesday" (see glossary). Because of the importance of the post, it is given to a man in recognition of his seniority, ability, or political importance.

¶ 70. Particular Committees—State Rules

The state rules committee has considerable power. It frequently consists of party leaders or committee chairmen, and the presiding officer is sometimes chairman or member ex-officio. It has much greater influence in the passage of a bill than other standing committees, as it may smooth its path to consideration, and overcome delays and obstacles to its enactment. The primary function of the rules committee is to recommend changes in the rules, suspension of the rules, and special rules for consideration, debate, expedition and preference of individual bills. In New York, near the end of the session, the assembly rules committee takes over control of all bills not disposed of by standing committees, and none of these may thereafter be considered unless

reported by rules. Public hearings on the merits of legislation are not held before this committee, its principal object being to expedite the transaction of business considered essential. Rule 20 of the New York Assembly makes the following provisions regarding the powers and duties of the rules committee:

> "At any time during the session a bill or resolution may be referred to the committee on Rules, and after the date fixed for the final reports of committees, as provided in Rule 19, (the rule requiring the speaker to fix a time limit for reports by standing committees) shall be referred to said committee.
>
> "In either case a notice may be given, requesting that such bill or resolution be made a special order, which notice shall be referred, without debate, to the committee on Rules.
>
> "At any time during the session, a bill or resolution may be introduced by the committee on Rules and referred back to the committee for consideration, or it may introduce and report a bill with instructions that it be placed on the special order second and third reading calendar.
>
> "The committee may report at any time, and such report shall stand as the determination of the House, unless otherwise ordered by a vote of a majority of the members elected. The committee shall not, however, report as a special order, a measure upon which a motion to discharge a standing committee has been made and lost, or upon which a motion to report from a standing committee has been made and lost by a majority vote of all the members of such committee."

¶ 71. Particular Committees—Steering

As the session approaches its end, sometimes a steering or sifting committee takes over bills in standing committees, much as the New York Assembly Rules committee does, as described in ¶ 70, supra. These committees may be formally part of the house machinery, or they may be informal party groups. It is obvious from the nature of the function of this committee that it is more powerful than any other when it has once taken over control of proceedings, and it is in a position to kill any legislation which has not sufficiently advanced before it assumes the reins.

¶ 72. Congressional Rules and Steering

In Congress, the Rules committee of the House and the Rules and Administration committee of the Senate function throughout each session to determine the order of consideration of all bills.

In the states, similar committees do not function in such a thorough manner until near the end of the session. The greater activity of the two congressional committees is made necessary by the much larger number of bills introduced.

¶ 73. Ways and Means

This is primarily a revenue, finance and taxation committee. In the states, bills reported out of other committees are often recommitted to this committee to consider the feasibility of raising additional revenue for the principal purpose of the measures. Massachusetts House Rule No. 40 provides in part that the committee on Ways and Means may originate and report appropriation bills. House Rule No. 44 states that bills involving an expenditure of public money or grant of public property, or otherwise affecting the state's finances, unless the subject matter has been acted upon by the joint committee on Ways and Means, shall, after their first reading, be referred to the house committee on Ways and Means for report on their relation to the finances of the commonwealth. New provisions may not be added to such bills by the house committee on Ways and Means unless directly connected with the financial features thereof. Massachusetts also provides other committees to perform some of the functions normally performed by the Ways and Means committee, including the committees on Counties and Municipal Finance. An example of similar functions of the Ways and Means committee is set forth in ¶ 65 supra (item 45).

¶ 74. Committee of the Whole

When all the members present in the legislative chamber desire freer procedure to consider a measure without the finality of action by the rules of the floor, they form themselves into what is termed a committee of the whole. They thereby cease to function under the rules governing the floor and operate under committee procedure. This procedure has many advantages; it is freer and more elastic; sometimes a smaller number of members may constitute a quorum; the recorded votes of yeas and nays are ordinarily not required; often, the previous question may not be put; and further, action taken on bills and amendments is no more final than it would be in a standing committee. The principal reason for forming into a committee of the whole is perhaps the procedure regarding debate. The rule that a member may not speak more than once or twice on a given matter, and the second time only after all others have

been heard who wish to be heard, sometimes moreover being limited to a definite number of minutes, does not usually apply. Aside from these variations, it is usually specified that otherwise the rules of the floor will govern.

When the house wishes to form itself into a committee of the whole, a committee chairman is appointed, the regular presiding officer steps down and the committee chairman takes his place. After some consideration of the business before it, the committee may rise (the term being equivalent to recess or dissolution as the circumstances may indicate), report progress, and ask permission to resume sitting at some later time; or it may have concluded its business, rise, the presiding officer of the house takes the chair again, and the chairman of the committee of the whole may then make just such a report as any standing committee might make. Action is taken on this report as on the reports of standing committees, and this action is usually, but not necessarily, adoption of the report without change. The house is at liberty to reject, alter or otherwise dispose of the report of the committee of the whole even though it may be made up of exactly the same members.

All action which normally follows any standing committee report, in the absence of any special rule to the contrary, is in order after receiving the report of the committee of the whole. In the United States Senate and some legislatures, a motion may be adopted to consider a question "as if in committee of the whole" without going through the formalities of changing chairmen, etc. Another equivalent form is to move that a question be considered "informally." Under this informal procedure, the passage of a bill is not its final passage but is merely an indication of its strength. While the legislature is in committee of the whole, it may not receive messages from the other house or otherwise, nor reports of other committees. If it is necessary to do this when deliberations are in progress, the presiding officer resumes the chair for that purpose.

In most legislatures, more work is done on controversial measures in committees of the whole than on the floor, or, in other words, than in the house operating as a legislative chamber.

¶ 75. Powers and Duties of Members

It is the right of every member to introduce bills, make motions, take part in debate, vote on matters submitted to the house of which he is a member, and to be granted the floor for these purposes under the rules of procedure. It is also his right

to such orderly, decorous and proper proceeding as will protect the effective exercise of his rights (see Chapter 9 and ¶ 103). He is immune from arrest going to and attending sessions and under the constitution, he is not required to answer for his statements made on the floor in any other place than in the house of which he is a member.

¶ 76. Miscellaneous Rights and Privileges of Members

A member ceases to have control over a bill or a motion after the bill is introduced or the chair has put the question, except by leave of the house. When once a member has the floor, and as long as he is not otherwise out of order, he may continue to hold it, subject to special rules, except as follows:

1. Question of privilege.
2. Objection to consideration of the matter on which he is speaking.
3. A demand that the house revert to the regular order of business, if the matter on which he is speaking is not the regular order of business.
4. An inquiry of the chair regarding procedure pertinent to the circumstances.
5. By consent of the member holding the floor, qualified or otherwise.[4]

These and other rights of members will be considered in greater detail in the chapters on parliamentary procedure (Chapters 8 to 12).

¶ 77. Rules

The branches of every legislature provide their own rules under which their deliberations proceed and in addition to these there are joint rules governing matters affecting both branches of the legislature taken together. So far as they affect only the business of the house making them, the rules are not subject to approval of the opposite house nor of the governor. The right to make rules as they see fit is limited only by the restrictions of the constitution, fundamental rights or statutes,[5] but failure to conform to these rules will not render an otherwise valid law invalid.[6] The method of amending the rules is usually provided

[4] The Chair and the Floor in Parliamentary Procedure by Lillian A. Lilly.

[5] People v. Devlin, 33 N. Y. 269. Crawford v. Gilcrist, 64 Fla. 41, 59 So. 963. U. S. v. Ballin, 12 Sup. Ct. 507, 144 U. S. 1.

[6] Goodwin v. State Board of Administration, 102 So. 718, 212 Ala. 453. State v. Cumberland Club, 188 S. W. 583, 136 Tenn. 84. In re Ryan, 50 N. W. 187, 80 Wisc. 414.

for in the rules themselves, but if not, ordinary parliamentary procedure permits such amendment at any time by a majority in the same manner as other motions are considered. It is the duty of the presiding officer or others affected to see that these rules are carried out and their suspension is customarily only by unanimous consent. These rules cover the organization of the house, the duties of the officials, the method of recognizing members and of putting motions, the appointment of committees, order of business, decorum and debate, and procedure generally. They bear the same relation to the established parliamentary practice as the statute law bears to the common law. That is, they supersede or modify parliamentary practice where they are in conflict with it; they confirm it when they are not, and when they are silent, the "common law" of parliamentary procedure obtains.

These rules are usually of long standing and only modified occasionally from session to session. They must be distinguished from temporary rules which are issued from time to time in the course of the session to expedite consideration of a bill, limit debate, etc. The rules themselves usually provide for the method of their amendment, repeal or temporary suspension. They are enforced by the presiding officer either on his own initiative or upon having an infraction brought to his attention. Each house is also held to be a judge of its own rules.[7]

NUMBER AND TERMS OF LEGISLATORS

STATE	*HOUSE*		*SENATE*	
	No.	*Term*	*No.*	*Term*
Alabama	106	4	35	4
Arizona	58	2	19	2
Arkansas	100	2	35	4
California	80	2	40	4
Colorado	65	2	35	4
Connecticut	272	2	36	2
Delaware	35	2	17	4
Florida	95	2	38	4
Georgia	205	2	54	2
Idaho	59	2	44	2
Illinois	153	2	51	4
Indiana	100	2	50	4
Iowa	108	2	50	4
Kansas	125	2	40	4
Kentucky	100	2	38	4
Louisiana	100	4	39	4

[7] State v. Cumberland Club, 188 S. W. 583, 136 Tenn. 84.

STATE	HOUSE No.	HOUSE Term	SENATE No.	SENATE Term
Maine	151	2	33	2
Maryland	123	4	29	4
Massachusetts	240	2	40	2
Michigan	100	2	32	2
Minnesota	131	2	67	4
Mississippi	140	4	49	4
Missouri	154	2	34	4
Montana	90	2	56	4
Nebraska	43	(unicameral)		2
Nevada	40	2	17	4
New Hampshire	400	2	24	2
New Jersey	60	2	21	4
New Mexico	49	2	24	4
New York	150	2	56	2
North Carolina	120	2	50	2
North Dakota	113	2	49	4
Ohio	138	2	36	2
Oklahoma	120	2	44	4
Oregon	60	2	30	4
Pennsylvania	208	2	50	4
Rhode Island	100	2	44	2
South Carolina	124	2	46	4
South Dakota	75	2	35	2
Tennessee	99	2	33	2
Texas	150	2	31	4
Utah	60	2	23	4
Vermont	246	2	30	2
Virginia	100	2	40	4
Washington	99	2	46	4
West Virginia	94	2	32	4
Wisconsin	100	2	33	4
Wyoming	56	2	27	4
Total No. of Legislators—House			5,651	
Senate			1,825[1]	
GRAND TOTAL			7,476[1]	

[1] Includes 43 Nebraska legislators.

CHAPTER 7
LEGISLATIVE SESSIONS

¶ 78. Time and Place of Meeting—Authority

The business of legislation is transacted upon the convening at a place designated in the constitution as the capital of the state. The time when the legislatures must convene is originally specified in the constitutions, although they may sometimes be subsequently changed by statute without the necessity of a constitutional amendment. All sessions meeting pursuant to this fixed time are called "regular sessions." They require no call of the governor and are not optional with the legislators. They are *required* to meet on the day fixed. Sessions which meet at other times, pursuant to a call, are designated "special" or "extraordinary" sessions. The place of meeting for either regular or special sessions remains always the same as specified in the constitution except in times of public danger of one kind or another, for which the constitution usually permits the designation of some other place. Special sessions may be called to convene at any time the governor deems that an emergency exists. The legislature in many states may require the governor to issue the call, but only in New Hampshire and Georgia may the legislature meet on its own motion without a call. The governor's call is made by a proclamation which specifies the time when the legislature is to meet and the reason for the session. After the call has been issued, it may be revoked, and a legislature which meets notwithstanding such revocation cannot proceed effectively.[1]

Often, the governor will issue supplementary proclamations, both before the actual meeting, or while the meeting is in progress. This may be for the purpose of enlarging the scope of the session; or where the custom of the state is to regard each session as limited to the call which convened it, he may convene supplementary sessions to meet either upon adjournment of the existing session, or while the first session is still in existence.[2] Thus, the meeting pursuant to the first call may be called the "First Extraordinary Session" and while this is in progress a new call specifying additional subjects may require that a "Second Extraordinary Session" meet. The first then recesses, and the second convenes and so the two sessions may proceed alternately as need for con-

[1] Tennant's Case, 3 Neb. 409.
[2] Foster v. Graves, 168 Ark. 1033, 275 S. W. 653. Pittsburgh's Petition, 217 Pa. 227, 66 Atl. 348; 28 Sup. Ct. 40, 207 U. S. 161.

sidering bills under one or the other may arise. And while these two are thus proceeding, a third may be called to cover some phase not previously anticipated. In California, the regular session meeting in the even year is called the "budget session" and meets on the first Monday in March. A similar designation will be used in Maryland if a pending proposition is adopted and the session will meet the first Wednesday in February (see ¶ 83).

¶ 79. Month and Year of Meeting

All but six legislatures in the United States regularly meet biennially. All but two of these meet in January. The following states meet annually: California, Massachusetts, New Jersey, New York, Rhode Island and South Carolina. The people of South Carolina adopted a constitutional amendment to meet biennially but the legislature has not yet rendered this effective. California meets annually, the even year being solely for budget, tax and emergency measures. A similar proposition is to be decided by the Maryland electorate November 1948. The following states meet in months other than January.: Florida, which convenes in April, and Louisiana, which convenes in May. Alabama meets for transacting business in May while a so-called special or preliminary session convenes in January solely for the purpose of organizing. It should be noted that the use of the term "special session" differs here from its use in other states. As the date for these "special sessions" are fixed, they are really only part of a split regular session. Of the biennial sessions, all but the following meet in the odd numbered years: Kentucky, Louisiana, Mississippi and Virginia. Alabama formerly met quadrennially, but a constitutional amendment providing for biennial meetings was adopted in 1939. There are now ten regular sessions meeting in the even numbered years: California, Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina and Virginia. In the odd numbered years there are forty-four. Congress meets annually. Puerto Rico meets annually. Alaska and Hawaii meet biennially.

¶ 80. Date of Meeting

None of the state legislatures meet on a specified date of the month, but the time is determined by naming one of the four weekdays, Monday, Tuesday, Wednesday or Thursday in relation to the other days of the month. For instance, the first Monday, or the first Tuesday; the Tuesday after the first day, etc. There are thirteen different days thus specified. Of the states

which meet in January, thirteen of them must convene within the first seven days. These are Colorado, Delaware, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, Ohio, Pennsylvania, Rhode Island and Tennessee. (In the even year California meets in March.) Nevada is the last to meet in January as it convenes the third Monday. Florida meets on the Tuesday following the first Monday in April, and Louisiana on the second Monday of May. Puerto Rico and Hawaii meet in February, the former on the second Monday, the latter, the third Wednesday. Special sessions, of course, are subject to no limitation as to the time when they may convene. They meet at such times as the governor may specify, and as often as he (or the legislature, where so provided) may deem necessary.

¶ 81. Hour of Meeting

Twelve o'clock noon is the time specified in the constitution of the various states for the convening of the regular session, and this is the time usually specified in proclamations calling special sessions. In recessing from day to day, a time is fixed upon in advance by rule which controls the absence of a resolution made to cover the particular day. At the beginning of the session, the hour varies from 10 A. M. to 2 P. M. Often towards the end of the session there are night meetings to expedite the business before the legislature. In Pennsylvania, it is customary for the first meeting of the week to be held on Monday night and this is so even in the early part of the session. Other states, including New York, Maryland and Ohio also meet Monday nights.

¶ 82. Subject Limits

At special sessions, in about half the states, the legislature is limited to a consideration of subjects in the proclamation calling the session, or subsequent subjects submitted by the governor; in the rest, it may consider any subject which might properly be considered at a regular session. Under the prevailing rule, all bills which failed to pass the preceding session may not be considered again at an intervening special session. There are, however, exceptions, including South Carolina and Congress. In special sessions, Congress is not limited to the subjects in the call of the President. Where bills are introduced which are not within the limits of the governor's call, in those states where the legislature is limited to such call, the speaker of the house or the president of the senate may rule that they are not germane and may not permit their introduction. If, however, he permits the

introduction of such a measure, it has been held invalid even though subsequently signed by the governor.[3] The tendency of the courts, however, is not to be strict in such matters. Where a broad interpretation of the governor's proclamation makes it possible to hold such legislation valid, this will be done.[4] The governor's right to restrict the subjects of a legislative call does not carry with it the right to specify or restrict the manner in which the legislature may see fit to dispose of the problems thus submitted to them.[5] Aside from limitations to the governor's call, special sessions have the same subject limits as regular sessions which are treated at ¶ 132.

¶ 83. Subject Limits—Budget Sessions

In California, the regular session in the even-numbered year is called the budget session, at which the legislature may only consider the budget bill for the succeeding fiscal year, revenue acts necessary therefor, "urgency" measures requiring a two-thirds vote, acts calling elections, proposed constitutional amendments, the approval or rejection of charters and charter amendments of cities, counties and cities-and-counties, and acts necessary to provide for the expenses of the session. The budget sessions meet the first Monday in March. In Maryland, at this writing, a similar proposition is pending to be voted upon in November 1948. The measures to be considered at the Maryland budget session are bills to do with budgetary, revenue and financial matters in the state government, legislation dealing with an acute emergency, and legislation in the general public welfare. The session would meet the first Wednesday in February, and would be limited to thirty days.

¶ 84. Organization

When a legislature convenes either in regular or special session, other than the first session after admission to statehood, it consists of members who have been returned to office and new members. In the absence of written rules to the contrary, the old members constitute an organized center through which the balance of the organization may take place. These carry-over members retain their status in the new session until the situation is altered by reorganization proceedings. After the acceptance of new members, organization in general consists in election of offi-

[3] Jones v. State, 107 S. E. 765, 151 Ga. 502.

[4] Wells v. Missouri Pacific R. R. Co., 19 S. W. 530, 110 Mo. 286.

[5] In re Likens, 72 A. 862, 223 Pa. 456.

cers, appointment of special committees, reorganization of standing committees, and the appointment of employees of the assembly. Naturally this reorganization is very substantial where a new political party takes over. It is proper therefore for all the old officers to be in their places when the legislature convenes, to be reappointed or superseded in the course of reorganization. The first step is to call the role of carry-over senators and reelected representatives and then to call for the credentials of the new members.

¶ 85. Journals

Records are kept of the daily proceedings, and these are called "journals." They are usually printed from day to day so that legislators and the public may be kept currently informed, though the "minutes" of the New Jersey legislature are often weeks behind and the journals of some state legislatures are not printed until after *sine die* adjournment. The journal itself is an important document and is regarded as conclusive evidence of all that has happened. The courts do not allow themselves the right to question the truth of the statements published in this record. Accordingly, the validity or invalidity of a bill, questioned on the basis of conformity with the technical requirements for passage is decided, not by hearing testimony of what actually happened, but by referring to the journal of proceedings. Among matters involving the legality of procedure looking toward the enactment of statutes, failure to set forth an amendment in the journal has been held not to invalidate a law [6] nor even the absence of an entry that the house of origin concurred in amendments.[7] If there is a specific requirement in the statute or the constitution for an entry, in some cases failure to make the entry must be observed,[7] while in other cases, in spite of a constitutional provision, a law is still valid though the journal failed to show concurrence.[8] But sometimes even a constitutional requirement, unobserved by a journal, will not invalidate a law.[8] Apparently the journal is to be taken as conclusive against a law only where it makes an affirmative statement, but its failure to mention a necessary step in procedure does not imply that the step was not taken.[9]

Entry of the vote for and against a measure is sometimes required by the constitution, and here the courts are usually more

[6] *Dakota County School District v.* Chapman, 152 F. 887, 82 C. C. A. 35.
[7] State v. Porter, 145 Ala. 541, 40 So. 144.
[8] *Whitley v. State*, 68 S. E. 716, 134 Ga. 758.
[9] State v. Algood, 10 S. W. 310, 87 Tenn. 163.

meticulous,[10] but they will strictly interpret the provision and will not extend it to amendments, or concurrence in amendments, or conference reports when the language of the mandate does not specifically so require, although some states do not share this view.[10] Records and notes made by clerks on which the final journal is to be based and produced do not of themselves constitute the journal in a court of law.[10] In general, presumptions and inferences are thus usually to the effect that the enactment of a law was in accordance with all mandatory requirements.

¶ 86. Credentials—Adoption of Rules

Upon the organization of the legislature, it is necessary to determine and verify those who have been elected or returned as members and this must be done before any of the business of the legislature is begun other than sufficient organization to pass upon these credentials. The usual method is the establishment of a committee charged with the duty of examining the claim of each applicant for membership in the house or senate. Occasionally there may be conflicting claims which are also considered by the committee and recommendations made to the house or senate in the same manner as other reports of committees. If there is doubt cast upon the right of a proposed member to admission, he is entitled to be heard on the matter; and while it is being decided, he withdraws from the committee room or assembly chamber where the matter is being discussed, unless they permit him to remain; in which case he must not take part in the discussion nor in the final decision. Each house is the judge of its own membership. As part of the procedure of organization, each house adopts the rules for the transaction of business and the behavior of its members, referred to in ¶ 77.

¶ 87. Life of Legislature

Congress, and all of the state legislatures except New Jersey (one year)[11] and Maryland, Louisiana, Mississippi and Alabama (four years), have a two year life. However, it is only in Congress and South Carolina that bills pending at the end of the first session of any regular session are still alive and pending at the next regular session. Even in Congress and South Carolina, however, this does not hold beyond the life of the legislature, so that a bill introduced and not disposed of at the end of the last session of the outgoing legislature would be dead. The even numbered

[10] Norman v. Kentucky Bd. of Managers, etc., 20 S. W. 901, 93 Ky. 537.

[11] Two years under new constitution beginning with the second Tuesday in January, 1948.

year is the last year of the life of these jurisdictions. A bill on the calendar after adjournment in 1943, 1945, etc. will still be on the calendar at the next session, whether the same year or 1944, 1946, etc. But a bill on the calendar on adjournment of the last session of 1944, 1946, etc., will not be alive at the next session in the following year.

¶ 88. Length of Sessions

Of the regular sessions, twenty-eight states place no limit on the length, but some of these use persuasion on the legislators by limiting their pay. Twelve other states have a sixty day limit. The balance of the limitations ranges from forty (Wyoming) to ninety (Maryland and Minnesota). Some of the limitations are by calendar days; others, legislative days. In the latter class, a state though limited to, say, sixty legislative days, may recess from time to time and stay in session for a year or more. The legislative-day states, that is, those which count the length of the session on the basis of the days when the legislature meets, and not by the calendar, are Alabama, Delaware, Idaho, Kansas, Kentucky, Minnesota, Oklahoma, Rhode Island, South Carolina, Tennessee and Texas. All other states which provide a limit of one kind or another, namely, Arizona, Arkansas, Florida, Georgia, Indiana, Louisiana, Maryland, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia and Wyoming limit the session by the calendar *regardless of the number of days' business performed.* Of the special sessions, twenty-five states have no limit, eight have no limit but the pay of the legislators. Five are limited to thirty days, four to twenty, two to forty, one each to ninety, seventy, and sixty. Arkansas may remain in session fifteen days after disposing of the subjects in the governor's call. There are pay limits, but no others, in Delaware, Kansas and Virginia (thirty days each); New Hampshire (fifteen days); North Carolina and Tennessee (twenty days). Georgia is limited to seventy days unless it convenes on its own motion, then thirty days. Straight time limits are fixed for Louisiana, Maryland, New Mexico, Texas, Utah (thirty days); Minnesota (ninety days); Montana (sixty days); Florida, Idaho, Nevada and Oregon (twenty days); Wyoming (forty days).

¶ 89. Method of Adjournment

The word "adjournment" is most frequently used at the termination of the legislative session (but this does not mean disbanding of the legislature), while the term "recess" is more

properly employed when a date has been fixed for reconvening. The former is referred to as "adjournment *sine die*" (without date). However, the term "adjournment" is frequently used as synonymous with recess, overnight, over a weekend, or for a definite period of time. The term "recess" is never used in connection with *sine die* adjournment. In recesses it is customary to move "that when we adjourn, we adjourn to meet . . ." specifying the time when the session is to resume. Recesses are proposed by motion duly seconded and are not subject to amendment or reconsideration. *Sine die* adjournments are usually the result of the adoption of a concurrent resolution which must pass both houses and is subject to amendment in the same manner as a bill. Where the constitution or statute fixes the limit of the session, it expires at that time without the adoption of a resolution. When the work has been concluded, for either a recess or *sine die* adjournment, the presiding officer may ask, "Is there any further business before the house?" If there is no reply, he may announce, "The meeting (or session) stands adjourned *sine die* (or until a date specified)." The chairman may also declare a meeting closed for lack of a quorum (see ¶ 123).

¶ 90. Stopping the Clock

The legislature which remains in session after the time fixed by law for its expiration cannot validly function if the journal shows it to be in session beyond that time; but the courts will not look behind the journal nor assert that it was in session at a different time than therein stated. It therefore often happens that when the time has arrived for the expiration of the legislative session, so that it will stand adjourned *sine die*, if there is still work to be done, it is the custom to stop the clock in the house and senate chambers and, by this fiction, to arrest the progress of time beyond the limit of the law or the resolution. There then results an "official time" of adjournment and an "actual time." The official time of adjournment is the basis for calculating the date when laws take effect, where their effectiveness is determined by the time of adjournment. It is not unusual for a legislature to remain in session for several days beyond the time set for adjournment, with the clock stopped. Normally, however, when this procedure is resorted to, there is only a few hours' difference between the official and actual time.

¶ 91. Constructive Sessions

A few states adjourn their regular business to return again in ten days more or less. The recess is sometimes, as in Virginia,

for the purpose of allowing clerks and others to catch up with the work of preparing laws for the governor, which must then be signed by the presiding officers of the houses. In others, as in Michigan, it is to act on the governor's vetoes, if any. In the former class, only a skeleton group of legislative officials return, as the acts are purely perfunctory. In the latter, the entire body is on hand to pass measures over the veto. In many states, presenting bills to the governor too late for his action before adjournment is intentional. Among such measures are sometimes some which have resulted from log-rolling and for which it is expected the governor will assume the political responsibility of veto or enactment.

RULES GOVERNING MEETING OF REGULAR SESSIONS

United States Congress and State Legislatures	*The Rule*	*The Exceptions*
Frequency of meetings	Biennially	Annual Sessions: Massachusetts, New Jersey, New York, Rhode Island, South Carolina and the United States Congress. California and Maryland * also meet annually, the even years being confined to taxation and budget.
Year of meetings	The odd-numbered years	Even-numbered years: Kentucky, Louisiana, Mississippi, Virginia, and the legislatures (listed above) meeting annually.
Month of meetings	January	March: California (on even-numbered years). April: Florida. May: Alabama (for consideration of legislation; meets in January for organization), Louisiana.

*In Maryland, a constitutional amendment is being submitted at an election November 1948 under which the legislature will meet annually, the even year sessions to convene in February to consider only budget, revenue, financial matters, acute emergencies and the general public welfare.

LEGISLATIVE SESSION TIME TABLE

State	Basis of Computation: Time of Meeting	Basis of Computation: Days	Time Limit: Regular	Time Limit: Special
Alabama	1st Tuesday in May 2nd Tuesday in January [a]	Calendar	36 10	36
Arizona	2nd Monday in January	Calendar	60 [b]	20 [b]
Arkansas	2nd Monday in January	Calendar	60 [c]	*
California	1st Monday after 1st day in January 1st Monday in March [f]		None [d]	None
Colorado	1st Wednesday in January		None [i]	None
Connecticut	Wednesday after 1st Monday in January		* [i]	None
Delaware	1st Tuesday in January	Calendar	60 [b]	30 [b]
Florida	1st Tuesday after 1st Monday in April	Calendar	60	20
Georgia	2nd Monday in January	Calendar	70	70 [b]
Idaho	1st Monday after 1st day in January	Calendar	60 [b]	20
Illinois	Wednesday after 1st Monday in January		None	None
Indiana	Thursday after 1st Monday in January	Calendar	61	40
Iowa	2nd Monday in January		None [i]	None
Kansas	2nd Tuesday in January	Calendar	50 [b]	30 [b]
Kentucky	1st Tuesday after 1st Monday in January	Calendar	60	None
Louisiana	2nd Monday in May	Calendar	60	30
Maine	1st Wednesday in January		None [i]	None
Maryland	1st Wednesday in January	Calendar	90	30
Massachusetts	1st Wednesday in January		None	None
Michigan	1st Wednesday in January		None [i]	None
Minnesota	1st Tuesday after 1st Monday in January	Calendar	90	90
Mississippi	1st Tuesday after 1st Monday in January		None	None
Missouri	1st Wednesday after 1st day in January		None	None
Montana	1st Monday in January	Calendar	60	60
Nebraska	1st Tuesday in January		None	None

Footnotes at end of table.

State	Basis of Computation: Time of Meeting	Basis of Computation: Days	Time Limit: Regular	Time Limit: Special
Nevada	3rd Monday in January	Calendar	60	20
New Hampshire	1st Wednesday in January		None	15 [b]
New Jersey	2nd Tuesday in January		None [j]	None
New Mexico	2nd Tuesday in January	Calendar	60	30
New York	Wednesday after 1st Monday in January		None	None
North Carolina	1st Wednesday after 1st Monday in January		None [j]	20 [b]
North Dakota	1st Tuesday after 1st Monday in January	Calendar	60	None
Ohio	1st Monday in January		None	None
Oklahoma	1st Tuesday after 1st Monday in January	Calendar	60 [j]	None
Oregon	2nd Monday in January	Calendar	50 [b]	20
Pennsylvania	1st Tuesday in January		None	None
Rhode Island	1st Tuesday in January	Calendar	60 [b]	None
South Carolina	2nd Tuesday in January	Calendar	40 [b]	40 [b]
South Dakota	1st Tuesday after 1st Monday in January	Calendar	60	None
Tennessee	1st Monday in January	Calendar	75 [b]	20 [b]
Texas	2nd Tuesday in January	Calendar	120 [j]	30
Utah	2nd Monday in January	Calendar	60	30
Vermont	1st Wednesday after 1st Monday in January		None	None
Virginia	2nd Wednesday in January	Calendar	60 [j]	30 [b]
Washington	2nd Monday in January	Calendar	60	None
West Virginia	2nd Wednesday in January	Calendar	60 [e]	None
Wisconsin	*2nd Wednesday in January*		*None*	*None*
Wyoming	2nd Tuesday in January	Calendar	40	40
U. S. Congress	January 3rd [m]		[k]	None

[a] For organization only. Meets in May for legislative business.

[b] Pay limited to day indicated, otherwise unlimited.

[c] May be extended by a two-thirds vote.

[d] Approximately 30 days recess between period in which bills are introduced and the period in which action is customarily taken.

[e] Subjects in governor's call disposed of first, thereafter, 15 days.

[f] Budget session meets in even-numbered years.

[g] First Wednesday after first Monday in June.

[h] Logislature may convene itself. 30 day limit. No subject limit.

[i] Pay reduced after day indicated, otherwise unlimited.

[j] Session may be extended thirty days more without pay.

[k] Except in time of war or national emergency, Congress shall adjourn not later than the last day of July each year, unless otherwise provided.

[l] Flat rate of pay for the entire session.

[m] Unless by resolution a more convenient day is named.

SUBJECT LIMIT OF SPECIAL SESSIONS

Alabama .....Subjects in governor's call, any others by a two-thirds vote.
Arizona .....May only consider subjects in the governor's call.
Arkansas .....Subjects in governor's call, any others by a two-thirds vote.
California .....May only consider subjects in the governor's call.
Colorado .....May only consider subjects in the governor's call.
Connecticut .....May consider any subject which may be considered at a regular session.
Delaware .....May consider any subject which may be considered at a regular session.
Florida .....Subjects in governor's call, any others by a two-thirds vote.
Georgia .....May only consider subjects in the governor's call. The legislature may convene itself, in which case there is a thirty day limit but no subject limit.
Idaho .....May only consider subjects in the governor's call.
Illinois .....May only consider subjects in the governor's call.
Indiana .....May consider any subject which may be considered at a regular session.
Iowa .....May consider any subject which may be considered at a regular session.
Kansas .....May consider any subject which may be considered at a regular session.
Kentucky .....Subjects in governor's call, plus any additional submitted.
Louisiana .....May only consider subjects in the governor's call.
Maine .....May consider any subject which may be considered at a regular session.
Maryland .....May consider any subject which may be considered at a regular session.
Massachusetts ...May consider any subject which may be considered at a regular session.
Michigan ..... Subjects in governor's call, plus any additional submitted.
Minnesota .....May consider any subject which may be considered at a regular session.
Mississippi .....Subjects in governor's call, plus any additional submitted.
Missouri .....Subjects in governor's call, plus any additional submitted.
Montana .....Subjects in governor's call, plus any additional submitted.
Nebraska .....May only consider subjects in the governor's call.
Nevada .....Subjects in governor's call, plus any additional submitted.
New Hampshire .May consider any subject which may be considered at a regular session.
New Jersey .....May consider any subject which may be considered at a regular session.
New Mexico ....Subjects in governor's call, plus any additional submitted.
New York .....Subjects in governor's call, plus any additional submitted.
North Carolina ..May consider any subject which may be considered at a regular session.
North Dakota .. May consider any subject which may be considered at a regular session.
Ohio .....Subjects in governor's call, plus any additional submitted.
Oklahoma .....Subjects in governor's call, plus any additional submitted.

Oregon ..... May consider any subject which may be considered at a regular session.
Pennsylvania ... May only consider subjects in the governor's call.
Rhode Island .. .May consider any subject which may be considered at a regular session.
South Carolina ..May consider any subject which may be considered at a regular session.
South Dakota ..May consider any subject which may be considered at a regular session.
Tennessee ..... May only consider subjects in the governor's call.
Texas ..... Subjects in governor's call, plus any additional submitted.
Utah ..... Subjects in governor's call, plus any additional submitted.
Vermont ..... May consider any subject which may be considered at a regular session.
Virginia ..... May consider any subject which may be considered at a regular session.
Washington ..... May consider any subject which may be considered at a regular session.
West Virginia ... May only consider subjects in the governor's call.
Wisconsin ..... Subjects in governor's call, plus any additional submitted.
Wyoming ..... May consider any subject which may be considered at a regular session.
U. S. Congress... May consider any subject which may be considered at a regular session.

PART III
PARLIAMENTARY PROCEDURE

CHAPTER 8
PARLIAMENTARY PRACTICES IN GENERAL

¶ 92. Purpose and Origin

The intention of parliamentary procedure is that deliberative assemblies may proceed in an orderly manner to the accomplishment of their purposes, and that the members of such assemblies shall be protected in their right to present propositions, motions, bills and resolutions, participate in debate, and otherwise take part in the proceedings effectively, that the will of the legislature or other deliberating body may be truly expressed in the final acts, and that the rights of minorities may be protected. Thomas Jefferson said:

> "The maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body."[1]

[1] Jefferson's Manual of Parliamentary Practice.

The rules of parliamentary procedure had their origin and basis in the proceedings of the British House of Commons. In the United States, the federal House of Representatives is the body most nearly corresponding to the British Commons, and its proceedings are based upon the English parliamentary law. The reference book of the United States House of Representatives is Jefferson's Manual, which is also the reference book of some of the states. Others use Cushing's Manual and many use Roberts' Rules of Order. These works constitute a statement of a kind of common law upon the subject, and like the common law it may be supplemented, modified or repealed by the constitutions, statutes or written rules of the Congress or of the houses of the respective states, which, by the same analogy constitute the statute law. The legislative rules may be likened to a network through the interstices of which may be read the rules of procedure of the United States House of Representatives and through that again the unwritten law of the British Parliament.

¶ 93. Decorum

A courteous respect for the rights of fellow members, coupled with a thorough understanding of what those rights are, would avoid the necessity of nearly all the formal rules affecting decorum. Commotion, discourtesy, interruption without the consent of the member holding the floor are forbidden by rule, passing between the member and the speaker or president, attempt to drown out a speaker or to express disapproval of his remarks by catcalls are types of breaches of decorum unfortunately not unknown in deliberative assemblies. As for the member who is holding the floor, the rules forbid the use of indecent, insulting or offensive language, or departure from the subject under discussion. He is required to observe general rules of etiquette referred to in ¶ 95 and the other rules of the legislature.

¶ 94. Punishment for Breach

When offensive language is used, it is the right of another member to interrupt the speaker at once and to request the presiding officer to call him to order. Indeed, the rules sometimes provide that unless he is interrupted the opportunity to call him to order is lost. When called to order for this purpose, it is customary to reduce his remarks to writing at once, as the states do not in general make a verbatim transcript of debates (the federal Congress does). When the objectionable remarks are reduced to writing, the speaker may admit or deny that those were his

words and explain or apologize for them. If his actions are not satisfactory to the house, it may decide what punishment may properly be imposed. It is the duty of the presiding officer to preserve order, and to reprimand unwarranted interruptions and indecorous behavior. Apparently he is not held to be remiss in his duties if the house should become completely out-of-hand, for he is not the policeman of the house as a whole, but engaged only in assisting it to maintain effective and orderly procedure.

¶ 95. Etiquette

All speech is addressed to the presiding officer and not to the house at large nor to any one person in it. Only the presiding officer addresses the whole house or any one member as the occasion may demand. Where a member desires to answer or make reference to another member, he does so through the chair referring to the other member in the third person and designating him, not by name, but by the position which he holds, as "The senior senator from Montana," or by reference to his activity, as "The last speaker," etc. The basis for this, as for many other similar rules of etiquette and decorum, is that the proceedings may be carried on in an impersonal manner according to law and order, free from personalities, animosities and prejudices. Unless aged, an invalid, or otherwise incapacitated, a member must always stand when addressing the chair, making a motion, engaging in debate, answering a question, etc. His head must be uncovered in the assembly chamber.

As stated in ¶ 94 above, his remarks must be to the point or he may be called to order. However, there is a presumption that a member's remarks are relevant to the subject, and a fair presiding officer will not allow him to be called to order for trifling reasons, frivolously, for the purpose of heckling or otherwise interfering with his right to speak. The presiding officer refers to himself in the third person as "the chair." Custom specifies when he is to remain seated and when he is to stand. He stands when putting a question to the house; when explaining his views on questions of order; replying to inquiries from the floor; making explanations and expressing opinions. During debate he remains seated and also when stating a question (as distinguished from putting it). At other times, his position is optional or arises out of the fitness of the situation. He leaves the chair entirely when the house resolves itself into a committee of the whole and surrenders his post to the chairman of the committee.

¶ 96. Functions and Duties of the Chair

Rule 12 of the California Assembly sets forth the duties of the speaker as follows:

"(a) To preserve order and decorum; he may speak on points of order in preference to the other members, rising from his chair for that purpose.

"(b) To decide all questions of order subject to appeal to the Assembly by any member. On every appeal, he shall have the right to assign his reason for his decision.

"(c) To have general direction over the Assembly Chamber and rooms set aside for the use of the Assembly, including the rooms for use by members as private offices.

"(d) To name any member to perform the duties of the Speaker, but such substitutions shall not extend beyond adjournment.

"(e) To appoint the membership of all standing and special committees.

"(f) To propose a schedule of meetings of standing committees.

"(g) To have general control and direction over the Journals, papers, and bills of the Assembly.

"(h) To act as Chairman of the Committee of the Whole.

"(i) To order the lobby and gallery cleared whenever he shall deem it necessary.

"(j) To assign desks to properly accredited newspaper representatives.

"(k) To authenticate by his signature, when necessary, or when required by law, all bills, memorials, resolutions, orders, proceedings, writs, warrants, and subpenas issued by order of the Assembly.

"(l) The Speaker shall be ex officio member of all Assembly, joint, and interim committees with all of the rights and privileges of such membership, except the right to vote. In counting a quorum of any such committees, the Speaker shall not be counted as a member."

The foregoing is typical of the powers and duties of the presiding officers in other states with certain exceptions. Elsewhere, the speaker or president does not act as chairman of the committee of the whole except in a few jurisdictions where "informal procedure" permits the freedom of action of that committee without a change of chairmen. Although the presiding officer has the power and duty to maintain order, clear the gallery in case

of disorder, and call the members to order, he does not have the power to censure or punish; but he may, even without the request of a member and on his own initiative, name a disorderly member. The chairman of the committee of the whole does not have this power, and in case of disorder it is customary to have the presiding officer resume the chair to restore order, without the necessity of having the committee rise. He is also in control not only of the actual chamber where the house meets, but the adjacent corridors and passageways, cloak rooms, press rooms, etc. He answers questions of procedure propounded to him, but not the legislative effects of any proposal or the desirability or expediency of any particular course of action. It is often specified that he has the power to vote the same as any other member, but this power is frequently confined to those instances where there is a tie, or where, when a vote larger than a majority is required, his vote will determine the issue.

¶ 97. Appeals

It is proper to appeal from any decision of the presiding officer, if the appeal is made immediately after the ruling from which the appeal is to be taken. Appeals are made to the whole body, and, after they have been seconded, the chair must state the appeal somewhat as follows: "Shall the decision of the chair in this matter stand?" Debate may ensue, if the matter is debatable, and in the course of the debate, further rulings of the chair, to avoid confusion and complications, are not then appealable. They may, nevertheless, be brought into question after the pending appeal is settled. Appeals are properly made only from a ruling, and not from mere information, advice or opinions given. If business is allowed to intervene between the ruling to which objection is had, and the appeal, the latter is not in order. It is proper for a member to stand, even while another has the floor, and propose the appeal. Such appeal does not cost the speaking member the floor, unless the appeal relates to his right to hold it, and he may resume it when the appeal has been determined. There is no debate on an appeal relating merely to breach of decorum, or the correct order of business, or while votes are being counted on a division.

CHAPTER 9

MOTIONS AND PETITIONS

¶ 98. Definition

A motion is a formal proposition submitted to the assembly relative to bills or other business of the legislature. There are many formalities regarding the circumstances when a motion may properly be made and the manner of making it. These formalities determine whether or not a motion is in order, whether it must be seconded, whether it is required to be in writing, whether or not it is subject to debate, whether it may or may not be amended, and the percentage or number of votes required for its adoption.

¶ 99. Kinds of Motions

Motions which may be made before the house include motions to adjourn, amend, appeal from the decision of the chair, call to order, for orders of the day, to reconsider, to limit or close debate, to commit, withdraw from committee for floor consideration, discharge a committee, demand a division, fill in a blank, make special order of business, postpone to a certain day or indefinitely, the previous question, for recess or adjournment, to suspend the rules, to take from the table. Some of these motions are privileged, that is, they are considered to be of prime importance, and these motions take precedence over others.

¶ 100. Order of Precedence

Motions are either privileged or subsidiary. The privileged motion may be considered though not relevant to the matter under consideration. Subsidiary motions are those which relate to the question before the house. Parliamentary procedure and the rules of the various states specify the order in which these motions have precedence. New York Assembly rule 21 on precedence of motions reads as follows:

> "When a question shall be under consideration no motion may be made under any order of business. Motions shall have precedence in the order stated, viz.:
>
> "1. For an adjournment of the House.
> "2. A call of the House.

"3. For the previous question.
"4. To lay on the table.
"5. To postpone to a certain day.
"6. To commit.
"7. To amend.
"8. To postpone indefinitely."

The rules following the foregoing then give the motion to reconsider and the motion to recall a bill from the governor, as motions which may be made under any order of business.

Similarly, Michigan House rule 46 reads:

"When a question is under debate, no motion shall be received but—

"1. To adjourn.
"2. To take a recess.
"3. To reconsider.
"4. To lay on the table.
"5. For the previous question.
"6. To postpone to a day certain.
"7. To commit.
"8. To amend.
"9. To postpone indefinitely.

"Such motions shall take precedence in the order in which they stand arranged, * * *."

¶ 101. Privileged Questions

The foregoing, then, are privileged questions and this is a term applied to a group of motions which are in order though they do not directly relate to a pending question, and, notwithstanding its pendency, take precedence over it. Among this type of motions is a group usually denominated "questions of privilege" which, due to the similarity of terms, is often confused with it. A privileged question or a privileged motion is one which has rights which other motions do not have, namely, the right of being proposed at any time though irrelevant to the issue before the house, even to the extent, in some cases, of interrupting a member while he is speaking. The word *privileged* here qualifies the word *motion* or *question.* It is the motion itself which has certain superior rights, or privileges. *Questions of privilege* belong in this classification, and this term relates to the privileges of the assembly or its members, or one member in particular. The privileged questions relate to *adjournment, recess, questions of privilege* and *demand for the orders of the day,* which will be discussed in detail.

¶ 102. Adjournment and Recess

A motion for *sine die* adjournment is not privileged, and therefore may not be brought up when another matter is pending. Actual adjournment, of course, may take place notwithstanding the pendency of business, either by expiration of the life of the session, or in accordance with a previously adopted resolution to adjourn at a certain time. But no time having previously been thus fixed, a motion to adjourn *sine die* is not privileged, and is out of order if another motion is before the house. In order to be privileged to consideration above a pending matter, the adjournment or recess proposed must be either to fix the time for adjournment or recess, or simply "to adjourn" subject to already existing rules or resolutions for reconvening.

¶ 103. Questions of Privilege

This group of motions covers the rights, privileges, comfort, etc., of the house as a whole or members in particular. Noises, disturbances, discomfort of heat, cold, air, the behavior of officials and employees, reflections upon the character of a member, quarrels, breaches of decorum are among matters affecting the legislature or its members and the correction of these matters is the subject of motions properly denominated questions of privilege. Georgia Senate rule 126 defines questions of privilege as

> "First, those affecting the rights of the Senate collectively, its safety, dignity and the integrity of its proceedings;
>
> "Second, the rights, reputation and conduct of senators individually, in their representative capacity only * * *."

Colorado gives the same definition (House rule 9). Most states do not define them and many do not mention them.

An excellent exposition of "questions of privilege" and "privileged questions" is given in the annotations to Arkansas rule 8:

> "The privilege of the House, as distinguished from that of the individual member, includes questions relating to its constitutional prerogatives, in respect to revenue legislation and appropriations; its power to punish for contempt, whether of its own members, of witnesses who are summoned to give information or of other persons, questions relating to its organization, and the title of its members to their seats, including various questions incidental thereto, the conduct of officers and employees, comfort and convenience of members and employees, admission to the floor of the House, the accuracy and propriety of reports in the Journal, the conduct

of representatives of the press, the protection of papers in its files, especially when demanded by the courts, the integrity of its Journal, the protection of its records, the accuracy of its documents and messages, and the integrity of the processes by which bills are considered. The privilege of the member rests primarily on the constitution, which gives to him a conditional immunity from arrest; and an unconditional freedom of debate in the House. A menace to the personal safety of members from an insecure ceiling in the Hall was held to involve a question of the highest privilege; and an assault on a member within the capitol when the House was not in session, from a cause not connected with the member's representative capacity, was also held to involve a question of privilege. But there has been doubt as to the right of the House to interfere for the protection of members who, outside the Hall, get into difficulties not connected with their official duties. Charges against the conduct of a member are held to involve privilege when they relate to his representative capacity; but when they relate to conduct at a time before he became a member they have not been entertained as of privilege. A distinction has been drawn between charges made by one member against another in a newspaper and the same when made on the floor. Charges made in newspapers against members in their representative capacities involve privilege, even though the names of individual members be not given. But vague charges in newspaper articles, or even misrepresentations of the members' speeches or acts have not been entertained. The clause of the rule giving questions of privilege precedence of all other questions except a motion to adjourn is recognition of a principle always well understood in the House for it is an axiom of the parliamentary law that such a question supersedes the consideration of the original question, and must be first disposed of. As the business of the House began to increase it was found necessary to give certain important matters a precedence by rule and such matters are called privileged questions. But as they relate merely to the order of business under the rules, they are to be distinguished from questions of privilege, which relate to the safety or efficiency of the House itself as an organ for action. It is evident, therefore, that a question of privilege takes precedence over a matter merely privileged under the rules. Formerly certain matters of business arising under provisions of the Constitution mandatory in nature, were held to have a privilege which superseded the rules establishing the order of business, as bills providing for apportionment, bills returned with the objections of the Governor, propositions of impeachment, and questions incidental thereto, matters relating to the count of

the general election vote, and resolutions relating to adjournment and recess and a resolution declaring the office of Speaker vacant; but under later decisions bills relating to apportionment have been held not to present questions of privilege, and the effect of such decisions is to require all questions of privilege to come within the specific provisions of this rule. The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules without precedence as matters of privilege. A motion to amend the rules of the House does not present a question of privilege. A question of privilege may interrupt the reading of the Journal or the consideration of a bill under a special order or rule providing for a vote "without intervening motion" or the consideration of a matter on which the previous question has been ordered. While a question of privilege is pending a message of the Governor is received but is read only by unanimous consent. A motion to reconsider may also be entered but may not be considered. Only one question of privilege may be pending at a time. In general one question of privilege may not take precedence over another. When a member proposes merely to address the House on a question of personal privilege, and does not bring up a matter affecting the efficiency or integrity of the House as an organ for action, the practice as to precedence is somewhat different. Thus a member rising to a question of personal privilege may not interrupt a call of the yeas and nays or take from the floor another member who has been recognized for debate, but he may interrupt the ordinary legislative business. A member may address the House on a question of personal privilege even after the previous question has been ordered on a pending bill. During a call of the House in the absence of a quorum only such questions of privilege may be presented as relate to the immediate proceedings. A question of privilege may be raised in Committee of the Whole as to a matter occurring in that committee, yet a breach of privilege occurring in Committee of the Whole relates to the dignity of the House and is so treated. A proposition of privilege may lose its precedence by association with a matter not privilege. Whenever it is asserted on the floor that the privileges of the House are invaded, the Speaker entertains the question and common fame has been held sufficient basis for raising a question; a telegraphic dispatch may also furnish a basis. But a member may not as a matter of right, require the reading of a book or a paper on suggesting that it contains matters infringing on the privileges of the House. In presenting a question of personal privilege the member is not required in the first instance to offer a motion, but he

must take this preliminary step in raising a question of general privileges. It is the duty of the Speaker to determine whether the matter is privileged or not."

¶ 104. Precedence of Other Motions

Many motions are in order while others are pending, and they are then decided in a certain logical order under parliamentary rules. Privileged motions, as shown above, are in order though not relevant to the matter under consideration. We are now to consider when an unprivileged motion is in order, though another is pending, and the order in which it is proper to dispose of them. This class of motion, because relevant to the pending matter, is called subsidiary or subordinate to the main question. Of these subsidiary motions, the order of precedence is as follows: A motion to table is first in order; for if other things are so pressing that the matter should be temporarily laid aside, of what value would be the motion to table if it were necessary to keep the urgent things waiting while the motion to table waited its turn? The next of the subsidiaries is the previous question. Tabling is, in general, to postpone consideration; the previous question is to bring it to a vote. Obviously there would be no sense in disposing of it first, then considering tabling it. The extent of the debate follows next; for if the matter is not to be postponed or brought to a vote, debate certainly is next a subject for consideration. Postponement to a definite time is next in order, as distinguished from the uncertain time brought about by tabling, followed by motions to commit or recommit. Then follow the motions to amend, beginning with amendments to amendments (third degree amendments are not permitted, i. e., amendments to amendments to amendments), then the first degree amendments. Finally, and just before the main motion, is the motion to postpone indefinitely.

¶ 105. Writing

The "common law" of parliamentary procedure usually requires that motions be in writing and that the presiding officer is not obliged to pay attention to those which are not; but this is primarily a matter of local rule, custom and convenience. Thus, Montana House rule 24 reads in part:

> "Every motion made to the house and entertained by the speaker shall be reduced to writing upon demand of any member, and shall be entered on the journal with the name of the member making it unless it is defeated or withdrawn the same day."

It would, however, be burdensome to require many types of motions to be in writing, and some rules do not require it. For instance, Rhode Island House rule 16 reads:

> "When a motion is made and seconded it shall be stated by the speaker, or, being in writing, shall be handed to the speaker and read by the clerk, before debate. Any motion shall be reduced to writing before debate whenever the speaker or any member shall so request."

¶ 106. Forms

While usually no special wording is required to make a motion other than to state it clearly and distinctly, some forms are more effective when the recognized usage is followed. Thus, for adjournment until the next regular day of sitting, "Mr. Speaker, I move that this assembly do now adjourn"; to make a motion or put a question on a matter of privilege when another matter is pending, "Mr. Speaker, I arise to a question of privilege" followed by a statement of the privileged matter; to withdraw from a committee for the purpose of amendment, "Mr. Speaker, I move that Assembly Bill No. 411 be withdrawn from the Committee on Corporations for the purpose of amendment and recommitment"; and for a motion for the previous question, "Mr. Speaker, I move the previous question."

¶ 107. Seconding

The introduction of bills is not required to be seconded. Many motions, however, must be seconded and where this is required it is not necessary for the chair to entertain an unseconded motion or to give it any recognition whatever. Among the motions that do not require seconding are the following: A motion calling the attention of the chair to a violation of a rule of procedure; a motion requesting that the regular order of business be maintained; a motion to act upon a pending motion to reconsider; a motion requiring division of the house by a rising vote when there is a doubt expressed as to the decision of the chair on a vote; a motion to divide the question into separate portions and to consider and vote upon each portion individually; a motion to fill in a blank; a motion to request the right to withdraw a motion or to modify it; objection to consideration of a question; request for information; questions of privilege.

¶ 108. Amendments to Motions

When a motion is made and seconded, if necessary, it is in order for another member to offer an amendment to the motion.

If this amendment is agreeable to the author of the motion, he may state that he accepts the amendment. The presiding officer must then ask if there is any objection. If no objection is made, the amendment becomes part of the original motion. However, if an objection is made, then the question of the amendment must be put to the house and decided upon before proceeding with the question of the main motion.[1]

¶ 109. Motions Which May Not Be Amended

Certain motions may not be amended. These include: simple motions to adjourn without mentioning a date, and thus understood to be to the next meeting day (where a date is involved or where the motion is to recess, an amendment is in order); motion directing attention to the violation of a rule; appeal from the decision of the chair on a debatable question; demand for a rising vote; motion to withdraw a motion or to modify it; motion to table temporarily; an objection to the consideration of any matter; motion for the previous question; questions of privilege; reconsideration; suspension of rules; or a motion to consider a matter out of its proper order.

¶ 110. Debate on Motions

Some motions are not debatable. They include privileged motions to adjourn for the day, recess, or fix the time to which to adjourn; motion to amend an undebatable motion; demand to conform to the orders of the day; for cloture on debate; for a rising vote; for division of the question; for filling a blank; to withdraw or modify a motion; to table temporarily or take from the table; objection to consideration of a matter; request for information; some appeals from the chair; call for the previous question; time of debate; suspension of rules; to take up a matter out of its regular order, and to amend an undebatable motion. It is not usually the right of a member to speak more than once on the same question, unless he is its author, without the permission of the house. But if he is the author, he is expected to reply to arguments against it after all others have had their say who wish to speak.

¶ 111. Reconsideration

After the vote has been determined on some motions, it is not in order to reconsider. These include: motion to adjourn;

[1] The Chair and the Floor in Parliamentary Procedure by Lillian A. Lilly.

demand to conform to orders of the day; demand for a rising vote; demand for division of a question; motion to table temporarily; inquiries; motions having to do with violations of rules, or of privilege; motion to recess; motions to take a matter from the table or to take up a question out of its regular order for a further discussion of reconsideration (see ¶ 49).

¶ 112. Petitions

A petition is a request for action by other than a legislator. Of itself, it is not an integral ingredient of the ultimate law, but at best a catalyst which may cause those ingredients to bring about the desired results. The only action taken on a petition as such is to accept it and read it and refer it to a committee or, rarely, reject it. It is a persuasive influence, but of itself inconclusive (see ¶ 1). It is presented by a member in place who states what it is and hands it to the clerk, or the presiding officer. It is accepted as a matter of course unless an objection is offered. In Massachusetts, most petitions are accompanied by bills which are intended to carry out the petition (see ¶ 222).

CHAPTER 10

THE FLOOR

¶ 113. Definition

Literally, the term "floor" refers, in parliamentary usage, to that area in which the members of the deliberating body all assemble, and it is thus distinguished from the committee rooms, the galleries, the lobby, or any other portion of the capitol building. In legislatures, it therefore means the house or senate chamber, or so much of it as is restricted primarily to the use and business of each branch of the legislature. Figuratively, it means the privilege of being on that floor, which is reserved during legislative sessions to the members of the legislature. "To have the floor" means to have the right to stand and speak, or continue to stand or speak, as a member of the body in question, as an invitee, or as a legislator, in the house or senate chamber. Action taken upon the floor means that action which is taken by the house as a body, distinct from committee deliberations or reports. Thus an amendment "offered from the floor" distinguishes an amendment adopted in committee. The term "floor" still applies when the house is acting in committee of the whole, though the rules governing the right to the floor may be different.

¶ 114. *Method of Obtaining the Floor*

The floors of the house and senate are highly restricted territory. No one has a right there except the members, officials, employees, the specially privileged and invited persons. A characteristic rule on this subject is Kansas House Rule No. 7 which reads as follows:

> "The following classes of persons and no others shall have admission to the floor of the House: (1) Reporters of the public press, actually employed, by card of admission from the speaker. (2) State officers. (3) Justices of the Supreme Court of Kansas. (4) All members and their immediate families. (5) Officers and employees of the legislature. (6) Members of former legislatures and those having temporary permits from the speaker. No person other than members shall be allowed to occupy a seat in the body of the House. No person shall be admitted to the floor of the House who is agent or attorney for or interested in any pending legislation, when the same is under consideration or discussion by the House. Ten minutes before the House is called

to order the sergeant-at-arms will remove all persons from the floor, save those excepted by the rules."

When it is sought to obtain the floor, either for the purpose of introducing a bill, resolution, or motion, or to speak in debate, or for any other purpose, it is necessary to rise and address the presiding officer by his title. A member may then not proceed until he is recognized. This recognition consists in looking at the member and mentioning his name.[1] Failure to recognize a member or improperly giving the floor to another person who was not the first to rise is appealable to the body as a whole, as are other rulings of the chair. Sometimes a question arises as to which individual has the right to the floor, as where more than one may stand simultaneously. The decision is one for the presiding officer to make. Normally he will recognize the one who first rose and addressed him, but the decision is not necessarily based upon who first rises or speaks. There are other rights involved.

Thus, when a man who has not had an opportunity to debate the matter is the author of the pending question, he has a right to speak first. A committee member making a report likewise has precedence, and the same is true of one proposing a motion to reconsider when there is no question pending, or motion to call up for reconsideration or take from the table. In order to obtain the advantages of precedence, it must be clear as soon as he speaks what the speaker's intentions may be by a statement at once to the presiding officer of the reason for his request for the floor. The floor, once obtained, is held subject to the rules of the house on order and debate until yielded either by the member's sitting down or by a verbal statement to that effect upon request of another member. Besides being given to members of the legislature, the privileges of the floor—that is, the right to speak—are often accorded to distinguished visitors.

¶ 115. Holding the Floor—Speaking More Than Once

In the absence of a special rule to cut off debate, a legislator who has the floor has the right to retain it as long as his remarks concern the motion under consideration. Even when it is contended that he is not speaking on the motion, the presumption that he is doing so is in his favor. No other motion is in order except a call to order. Even then, the point of order having been decided, he may still proceed as long as he remains on his feet and continues to speak, unless he is disciplined for breach of decorum.

[1] Cushing's Manual of Parliamentary Practice, page 46.

Sometimes in the course of a long speech, a member in his seat may call for the question. This is merely an expression of the desire of that member to terminate the debate but it does not have the effect of depriving the speaker of his right to continue, nor is it recognized by the chair. Indeed, if such interruptions occur in such a manner as to prevent effective continuation of the speech, the speaker may demand that those guilty of interruption may themselves be called to order.

A distinction may be drawn here, however, between the speaker's right and a common sense appraisal of the situation. If the body as a whole will not listen to him, or if it expresses a desire not to listen to him, it might be better if he would accept the situation and sit down, unless he is engaged in a filibuster (see ¶ 116). Having spoken on a motion and resumed his seat, the member is not entitled to speak again without permission unless he is the author of the pending motion, in which case it is recognized that he is to have the last word.

¶ 116. Filibuster

As a consequence of the rule set forth in the preceding paragraph, a member may prevent a matter from being brought to vote. Indeed, he may prevent adjournment, even overnight, by continuing to stand and speak. This right is sometimes employed to prevent the enactment of legislation which a minority refuses to countenance and seeks to prevent, though they know that it will most likely pass if brought to a vote. A filibuster is only finally effective where the session is drawing to a close and there is an opportunity to continue to speak until the time has arrived for its expiration, or until a trade or compromise is effected. At other times, it merely results in delay and in an endurance contest. The rules of all legislative bodies vary substantially in respect to allowing or disallowing a filibuster.

¶ 117. Cloture

Cloture or closure are names given to rules made up for the specific purpose of limiting the time to be allotted to debate on a given measure. Obviously the rights of any person speaking on a question before the house are thus limited by the provisions of the adopted rule and he may be interrupted when the time limit is reached. In the British House of Commons, the rule permits the speaker to inform the house that he feels that debate should be ended. A distinction should be made between cessation of

debate, and interruption of a man while he is speaking. The matter simply revolves around the wording of the rule. It is usually provided that each person may speak no longer than a certain specified length of time and that all debate shall close as of another specified time.

¶ 118. Yielding the Floor

The general rule is that when a speaker yields the floor at the request of someone else, regardless of the purpose for which he yields, he has lost his right to speak further on that occasion. No matter how he limits the right of the interrupting member, his limitations are of no avail. Thus to ask whether the speaker yields the floor for the purpose of asking a question results, if granted, in yielding the floor for all purposes. This is the parliamentary rule. But under various rules and practices, yielding for specific reasons such as the foregoing, meanwhile continuing to stand, is usually accepted as partial relinquishment for that purpose and that time only.

CHAPTER 11

RULE OF THE MAJORITY

¶ 119. General Rule

It is well to consider at this point the most important rule of the entire system of democracy. The elementary principle in this philosophy is not that the people considered as a collection of individuals govern, although the word democracy implies that this is so. They do not rule: First, because except under duress, a large voting public is never unanimous; second, because not all of them are enfranchised. For a long time America got along with only one sex voting—and not too badly. We now get along without the opinions of all those under twenty-one in most states, while in others those above seventeen participate. In representative assemblies, the people, of course, do not vote, but their chosen representative does, and so on. In another sense, however, the people rule in that majority and minority alike in a successful democracy submit to a system in which the processes of representative government are recognized as an expression of the will of the whole people. This process is based on what is called (not too precisely) the *majority rule.*

Majority rule in a legislature essentially means that those propositions shall become law on which more than half of those who have the right to vote agree. In actual practice, it is not simply the imposition of the will of 51% on 49%. Thousands of measures every year become law without a dissenting vote in the legislatures chiefly because they are so obviously for orderly good government. Having reminded ourselves of the fact of majority rule, it is necessary to examine both its meaning and its exceptions.

In the first place, then, a majority must obviously mean more than half of those *entitled* to vote. In southern states where, under the United States Constitution, negroes have the same right to vote as white persons, means are found to render this right nugatory.

Next, a majority in any one case may mean a majority of all the votes cast, a quorum being present.

Next, a majority may mean more than half of those present, regardless of votes cast.

Finally, a majority may mean more than half of all those elected to the assembly, called an *absolute* majority.

In addition to the foregoing, rules may require a different number of votes than a majority of any kind in certain instances which will be considered later. A majority of those present and voting when a quorum exists is sufficient for the passage of all ordinary legislation without emergency clauses. A majority of all the members of a legislative body elected is often specified as the minimum number for a quorum. The officers chosen by the respective houses of the legislature are required to be so chosen by an absolute majority. Some states require that a petition to discharge a committee from further consideration of a bill must be made by an absolute majority.[1]

¶ 120. More Than a Majority

There are numerous instances where more than a majority vote is required for passage of a measure or of a motion, as two-thirds, three-fifths, or a unanimous vote. A two-thirds vote is usually required to amend a proposition which has already been adopted; to avoid conformity with the regular order of business or orders of the day; to limit debate at some future time; to suspend certain rules; to continue debate where the time limit has been reached; to postpone the hour when the house is due to recess or adjourn when it has already been fixed; to prevent further consideration of a matter by the device of the previous question; to take up matters out of their regular order or to suspend the rule; to attach an emergency clause to a bill so as to give it immediate effect upon approval. A two-thirds vote is customary to repass a bill over the governor's veto, although in some states a majority of the whole number elected to the legislature is sufficient for this purpose. An absolute majority of two-thirds or three-fifths of the elected membership is sometimes a requirement for passage of a constitutional amendment. A unanimous vote is sometimes required for limiting or extending the time of debate, making a special order, suspending certain other rules, introducing bills after the expiration of a time limit, or adopting amendments out of order.

In Arkansas, a majority of two-thirds is required for the levy of taxes or the appropriation of money except for the payment of just debts of the state, deferring the necessary expenses of the government, sustaining the common schools, repelling invasion and suppressing insurrection.[2] Appropriations in California beyond a certain minimum require two-thirds vote.[3] In Kentucky,

[1] Rhode Island Senate Rule No. 37.
[2] Arkansas Constitution, Article V, Section 31.
[3] California Constitution, Article IV, Section 34A.

no bill may become law even if it receives a majority of all those present, unless it receives a vote of at least two-fifths of the members elected to each house; but appropriations must receive the vote of a majority of all members elected.[4] In Maryland, supplementary appropriation bills must also be passed by a majority of the whole number of members elected.[5] In Michigan, two-thirds of the members elected to each house are required to make appropriations for local or private purchases.[6] In Mississippi, appropriations are by a majority of all members elected, and donations and gratuities, by two-thirds of the members elected.[7] Similar restrictive provisions exist in Nebraska,[8] New York,[9] Rhode Island,[10] South Dakota,[11] Virginia,[12] and Wisconsin.[13] Special provisions also apply to the adoption of an emergency clause (see ¶ 198); to bills imposing a tax;[14] to changing the salaries of officials;[15] to creating debts or charges against the state;[16] to disposing of public property;[17] to creating or amending corporate charters;[18] and to other matters.

¶ 121. Less Than a Majority

Less than a majority has certain powers. First, where there is no quorum, those in attendance have the power to pass resolutions relative to adjournment and recess; to summon absentees; and by converse rule to the requirement for more than a majority, to block proceedings which require a vote of more than a majority as indicated above. Thus, a third may often require the full reading of a bill which would otherwise only be read by title. A third may require a roll call, and is sometimes required for a division of vote.

¶ 122. Absent and Not Voting—Ties

Where an absolute vote is not required, and a quorum is present, absentees do not affect the result. Those who are present are usually required by the rules to vote unless excused

[4] Kentucky Constitution, Section 46.
[5] Maryland Constitution, Article III, Section 52, Subsection C.
[6] Michigan Constitution, Article V, Section 24.
[7] Mississippi Constitution, Article IV, Sections 64 and 66.
[8] Nebraska Constitution, Article III, Section 22; Article IV, Section 7.
[9] New York Constitution, Article III, Sections 20 and 25.
[10] Rhode Island Constitution, Article IV, Section 14.
[11] South Dakota Constitution, Article XII, Section 2; Article XIII, Section 1.
[12] Virginia Constitution, Article IV, Section 50.
[13] Wisconsin Constitution, Article VIII, Section 8.
[14] Jones v. Chamberlain, 109 N. Y. 100, 16 N. E. 72.
[15] State ex rel. McKay v. City of New Orleans, 171 La. 670, 131 So. 843.
[16] State v. McDonald, 80 Wis. 407, 50 N. W. 185.
[17] People v. Marlboro Highway Commissioners, 54 N. Y. 276. Sweet v. Syracuse, 129 N. Y. 643, 27 N. E. 1081.
[18] People v. De Bow, 1 Den. (N. Y.) 9.

for cause, as where they have an interest in the outcome. But if there is no such rule, their failure to vote is deemed to be an acquiescence in the prevailing result. Even where a single vote is cast on a given proposition, that vote will prevail, though all the other members present should refrain, if all the other conditions are present for a legitimate decision. The presiding officer often has the power to vote in any case, but he is always permitted to cast a vote to break a tie; or he may cast a vote to create a tie, or to supply the needed two-thirds, three-fifths, etc., required to accomplish one of the specific purposes for which those larger votes are needed.

¶ 123. Quorum

As normal procedure where not otherwise specified requires only a majority vote of those present to transact business, it is necessary that a minimum limit should be placed upon the proportion of the total membership of the deliberative body which shall be regarded as necessary to proceed. This minimum is designated a quorum. In the absence of any rule, statute, or constitutional provision, a majority of the duly elected members constitutes a quorum. This percentage is specified in the Constitution of the United States.[18] Less than a quorum, however, may properly adjourn from time to time and may compel the attendance of absent members. The absence of a quorum may be suggested by a member and if the presiding officer or clerk find it to be so by any method provided by the rules or the law, the assembly is immediately reduced to the necessity of transacting only that business which less than a quorum may properly transact, namely, to secure the presence of absent members or to adjourn.

The absence of a quorum does not automatically work dissolution since, as indicated, there are certain powers left to the members present. An attempt was made in vain to establish a contrary precedent in the Wisconsin Senate, June 30, 1923. The question was on ordering a bill to a third reading. A call of the senate (see ¶ 124) was moved and adopted. The sergeant-at-arms closed the doors and the roll was called. Only fifteen senators responded and one rose to the point of order that the roll call revealed a lack of a quorum and that the session was thereby automatically dissolved. The reasoning, of course, could not be supported under any rule of the Wisconsin legislature or of parlia-

[18] Cushing's Manual of Parliamentary Practice, (revision of Albert S. Bolles), page 22.

mentary law and it was held not well taken. The fact of the presence of a quorum under the rules of Wisconsin, moreover, need not depend upon the answer to the roll in the senate; for the president is permitted to note the presence of members though they refrain from answering the call.

¶ 124. Call of the House

This term refers to the expedient of assembling absent members. From the time of the ancient Greek Ecclesia, the attendance at legislative bodies has been increased by summons wherever such attendance was desirable or necessary. In modern legislative bodies the attendance may be enforced by the members present, and this is referred to as a *call* of the house or senate. The sergeant-at-arms is usually charged with the duty of finding, summoning, and if necessary, arresting absentees who do not have legitimate excuse for their absence, and the house may punish such members for unexcused absences. The usual method is described in Georgia House rule 135:

> "Whenever the result of a vote taken shall disclose the fact that no quorum of the house is present, or when the Speaker shall officially state the fact to the house, it shall be in order for any member to make a motion for a call of the house, and when this motion is made, the Speaker shall state the question as follows: 'Shall the motion for the call of the house prevail?' and if fifteen of the members present shall vote in the affirmative, the Speaker shall order the Clerk to call the roll of members, and the absentees shall be noted; the doors shall then be closed, after which the names of the absentees shall again be called over, and those who do not appear, and who are absent without leave, may, by order of the majority of the members present, be sent for and arrested wherever they may be found by the officers to be appointed by the Messenger for that purpose, and their attendance secured, and the house shall determine upon what condition they shall be discharged."

CHAPTER 12
THE QUESTION

¶ 125. *Definitions*

The term "the question" means the submission of a proposition for determination by the deliberating body, the question being whether or not it shall be adopted or passed. "Putting the question" is asking the assembly its wishes regarding the matter under consideration. The term "the main question" is used to distinguish the principal proposition before the house from amendments and subsidiary proposals to the principal proposition. Thus, the question: "Shall house resolution 65 be now adopted?" is the main question, while a proposal to amend house resolution 65, or to postpone it, would be a subsidiary question. The term "previous question" has specific application to a motion to cut short debate, to bring a matter to issue, and to discontinue consideration either for the day or for the entire session as explained below in ¶ 128.

¶ 126. When Put

The presiding officer may ask the house whether it is ready for the question and this inquiry is usually made when debate has apparently come to a close or if no debate seems to be developing. It may also be put at the suggestion of members calling for the question, if no one then rises to make a further motion or continue the debate.

¶ 127. How Put—Call for a Division

The chair will state the nature of the question; for example, that the question is on the adoption of the motion to postpone indefinitely house bill 16. He will then inquire: "Are you ready for the question?" If there is no answer, or if someone calls "question" and if no one stands to be heard in further debate, the chair may then say: "Those who are in favor of the adoption of the resolution signify approval by saying 'aye.'" When these have voted, he requests those opposed to signify their disapproval by saying "no" and he then announces the result according to the apparent preponderance of ayes or noes. If his judgment is disputed, some member calls for a division, (which he may do without rising or obtaining the floor,) and he then resorts to a

visual method of voting as by the raising of hands or by asking all those who vote "aye" to stand, and, having counted them, asking those who vote "no" to stand. Sometimes a ballot is used, and some states have automatic voting machines. In using these machines, it is only necessary for each member to throw a switch on his desk. The votes appear in light on a large board on the wall and a further device on the presiding officer's desk makes it possible to record these votes on a form.

¶ 128. Motion of the Previous Question

In the United States, debate or consideration is sought to be cut short by an action called moving the previous question. It is a device originating in the British House of Commons about the early part of the 18th century for the purpose of bringing the matter to an immediate issue and suppressing it. The question would be put by the chair in the following form: "Shall the main question be put?" If the answer to this question by the chair was "no," it would mean that the parliament refused to give further consideration to the matter for the balance of the whole session, and it was thus effectively killed. By the insertion of the word "now" so that the form would be "Shall the main question be now put?", a negative answer would merely stop a decisive vote for that day. But if the answer were in the affirmative, the effect would be to vote at once on the main question (e. g., adoption of an amendment, passage of a bill, etc.). Thus, further debate would be precluded. In the United States, the intention of moving the previous question is to stop debate, not to kill consideration. The one who makes the motion desires that the assembly answer in the affirmative and by so doing bring the matter to a vote at once and stop further argument, whereas in England, this motion is made by one who desires an answer in the negative in order not only to stop further debate, but to cease further consideration entirely at least for the day.[1]

¶ 129. Negative Decision on Previous Question

In the New York Assembly and the Massachusetts House of Representatives, a negative answer to the question "Shall the main question be now put?" results in a failure to suppress debate. In the House of Representatives of Congress, either an affirmative or a negative answer will suppress debate because if the answer is affirmative, the question is at once put and there is no further

[1] Cushing's Manual of Parliamentary Practice.

occasion for debate, but if the answer is in the negative, not only is the main question not put, but further consideration is suspended for the day. Some states follow the Congressional rule and some the Massachusetts and New York rule. In all cases, if the assembly answers "yes", the main question is put at once without further delay or debate.[1]

[1] Cushing's Manual of Parliamentary Practice.

PART IV

INTRODUCTION AND PASSAGE OF BILLS AND RESOLUTIONS

CHAPTER 13

PRELIMINARY REQUIREMENTS FOR THE INTRODUCTION OF BILLS

¶ 130. Kinds of Measures—Definitions

Introductions include (1) bills, (2) resolutions. Motions are a third form of matters brought up for the consideration of the legislature, but their presentation is not referred to as an "introduction" nor are they said to be "introduced."

"Bill" is a term used to apply to drafts of proposed legislation [1] and this designation accompanies it until its enactment into law. In general, the bill lays down rules of conduct or procedure, whether affecting one or more persons or classes of persons, one or more localities or the whole state. The enacting clause of the bill differs from that of the resolution (see ¶ 138). Classifications of bills are described below at ¶ 162-165.

"Resolutions" express the will of the legislature, or one branch of it, but do not, in general, have the scope or authority of law. They include:

(a) Simple
(b) Joint
(c) Concurrent
(d) Joint and concurrent

The simple resolution requires only the approval of the house in which it originates. It is most frequently used to express sorrow, sympathy, praise, etc., or to make a request to the other branch of the legislature or the governor for the return of a bill for further consideration, or to regulate matters or conduct under its exclusive jurisdiction. The distinction between joint and concurrent resolutions is not always consistent, or always clear. Concurrent resolutions which do not deal with legislative matters, but nevertheless are not wholly within the jurisdiction of a single house, as are simple resolutions, require only the approval of both houses for their adoption. In other words, such resolutions are "con-

[1] Southwark Bank v. Commonwealth of Pennsylvania, 26 Pa. 450.

curred in." However, some concurrent resolutions approximate the functions of a bill, and in this case, or if action is required to be taken by the governor (other than returning a bill, etc.) the resolution is usually submitted to him for signature.

Joint resolutions, except those which propose an amendment to the constitution, usually have to be signed by the governor or the President. Such resolutions might, for instance, provide for an investigation, or the creation of an interim committee, etc. Joint or concurrent resolutions which propose an amendment to the constitution are not signed by the governor or the President, but are submitted to the people or to the states in accordance with the provisions of law. In California, constitutional amendments are referred to as such, and are designated neither bills nor resolutions, e. g., "Assembly Constitutional Amendment No. 10," "Senate Constitutional Amendment No.5," etc. The combination "joint and concurrent resolution" is intended to give adequate scope for the inclusion of subjects which might properly belong partly in the class of joint resolutions and partly in that of the concurrent resolutions.

Resolutions which attempt to lay down general rules of conduct are not usually regarded as valid. This is the majority view.[2] Mississippi holds the opposite view and regards such resolutions as valid.[3]

¶ 131. Subject Restriction—Federal

The powers of the Congress of the United States are limited to the subjects in the Constitution, and unless a measure may be held to fall within one of the items there enumerated, it is beyond the jurisdiction of that body. These items are covered in the eighteen paragraphs of Section 8 of Article I. These may be summarized thus: To tax; borrow; regulate international, interstate and Indian commerce; legislate on naturalization and bankruptcy; coin money and fix standards of weights and measures; punish counterfeiting, piracy, high sea felonies, offenses against the law of nations; establish post offices and roads; provide for copyrights and patents; establish courts inferior to the Supreme Court; declare war; provide for army and navy and make rules to govern them; call, organize, train and arm the militia; govern the District of Columbia and various other government lands and buildings; and to make all laws necessary for the carrying into effect of said powers.

[2] People v. Campbell, 8 Ill. 466. [3] Swan v. Buck, 40 Miss. 268.

The first paragraph of Section 8, relating to the levy of taxes, provides that they may be levied "to pay the debts and provide for the common defense and general welfare of the United States." The words "provide for the . . . general welfare of the United States" have at times been given a very broad interpretation. These grants of power by the states to Congress are further limited by the provisions of Section 9, which in eight paragraphs forbids: prohibition against the importation of slaves before 1808; denial of the writ of habeas corpus except in certain emergencies; bills of attainder and ex post facto laws; the levy of direct taxes except on a basis proportionate to population (this provision has been modified by the sixteenth amendment permitting the levy of an income tax, but is otherwise still in effect); export duties from one state to another; preference in interstate commerce to any state; duties or clearances for ships in interstate commerce; withdrawing money from the treasury other than by law, and the publication of accounts; granting of titles, or permitting them to be accepted by persons holding offices of profit or trust from foreign princes, etc. The first paragraph of Section 7 provides that the House shall originate bills for raising revenue.

¶ 132. Subject Restriction—State

As we have seen, states are theoretically and primarily sovereign nations with power to do anything which any free, autonomous and independent nation might do except to the extent they yield their rights to the federal government. No list of powers is therefore necessary in state constitutions, failing which a legislature might not act. Limitations on the law-making powers of states are made by the states, themselves; first, by yielding some of their rights to the federal government through the federal Constitution,[4] and second, by restricting the power to legislate in their own constitutions. The federal Constitution, Article I, Section 10, lists a number of things which states may not do, including making alliances or treaties, coining money, passing bills of attainder or ex post facto laws, enacting laws impairing the obligation of contracts, granting titles, levying export, import and tonnage duties, keeping troops and warships in peacetime, or engaging in war unless invaded or imminently threatened. The restrictions of the state constitutions are many and varied.

Legislators are expressly forbidden to pass certain kinds of laws, and in addition to this, of course, they may not pass any bill contrary to a subject already provided for by a lengthy con-

[4] Wright v. Cunningham, 91 S. W. 293, 115 Tenn. 445.

stitution. The Rhode Island constitution, the shortest one, forbids lotteries, the incurring of debts above $50,000 without the consent of the people, and makes certain provisions for appropriation bills (they must pass by two-thirds vote), for corporation laws (in seventy-five words), and for condemnations. Article IV of the Louisiana constitution, the longest, restricts the power of the legislature in 1700 words, covering appropriations, state debts, extra compensation, local or special laws, price fixing of manual labor, state aid to religious sects, loan of state credit, creation of charitable institutions, retroactive laws and trust estates.

Constitutions often provide that legislation must be general throughout the state. Outstanding exceptions include Georgia, Maryland, North Carolina and Tennessee. Special and local acts there constitute an important part of the bills passed at many sessions of the legislatures. A wise provision occurring in some constitutions forbids the inclusion of riders on appropriation bills.[5] South Carolina is an example of a state where this limitation does not obtain. An outstanding example of such a rider in that state is a perennial provision for state-wide provisional prohibition on the sale of liquors, attached to the appropriation bill. The Alabama constitution makes a large number of restrictions on legislative power. These deal with pensions to retired officers, lands, lotteries, miscegenation, and thirty-one items of local special and private legislation. In Michigan, local acts must first be approved by the voters in the district to be affected before they become law. Pennsylvania is another state which provides a long list of forbidden special and local acts; and so throughout the country there are similar restrictive provisions. There are also limits upon the kind of bills which may be introduced at special sessions where the governor has power to make restrictions in the call (see ¶ 82).

¶ 133. Limitation on Special Legislation

The legislatures of all states except Connecticut, Massachusetts, Rhode Island and Vermont have provisions forbidding the enactment of certain special or private laws. Special and private laws are terms often interchanged[6] and refer to legislation affecting one person, one thing, or part of a class, etc., while "local" refers to territorial limitations. In the absence of such constitutional prohibition, the states may perform any act not reserved for the exclusive jurisdiction of the federal government.

[5] Alabama Constitution, Article IV, Sec. 71.

[6] Youngs v. Hall, 9 Nev. 212.

The granting of divorce, for instance, is a right inherent in all sovereign law making bodies of the English type; and a legislature, barring a contrary provision in its own constitution, may grant or amend a corporate charter, which is the function now generally performed by administrative officials.

When local legislation is permitted by a state, it is frequently subject to further restrictions. These include publication in local newspapers prior to introduction, submission to the people of the territory affected, or approval by the mayor of the city affected. Most of the constitutional restrictions, after enumerating specific prohibitions, specify that in no case shall local or special acts be passed where a general act will serve the purpose. But whether a general act will serve the purpose seems to be primarily a decision to be made by the legislature rather than by the courts.[7] Often legislatures observe the letter and not the spirit of this proscription by legislating for localities in such terms that only one locality can be contained in a class, for example, "All counties having a population between 85,100 and 85,200 according to the last general census." Nevertheless, the courts also allow the legislature "reasonable classification." [8]

The following are the specific proscriptions against the passage of local or special law on the subjects indicated:

1. ***Children and Minors***—(a) *Adoption:* Authorizing the adoption of children: Alabama, Arkansas, California, Florida, Idaho, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Washington, Wyoming. (b) *Majority:* Declaring minors to be of age: California, Colorado, Idaho, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Washington, Wyoming. (Also see Disabilities, removal of, below). (c) *Legitimation:* Authorizing the legitimation of children: Alabama, Arkansas, California, Florida, Idaho, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Wyoming.

2. ***Citizenship***—Restoration of citizenship to persons convicted of infamous crimes: California, Idaho, Kentucky, Montana, New Mexico, North Carolina, North Dakota, Wyoming.

[7] Powell v. Purden, 61 Ark. 21, 31 S. W. 740.

[8] State v. Hartmann, 299 Mo. 410, 253 S. W. 991, 59 C. J. 726.

3. *Corporations*—Granting or amending charters: Alabama, Idaho, Kentucky, Louisiana, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Virginia, Washington, Wisconsin; naming or changing the name of a corporation: Virginia; remitting the forfeiture of a charter except upon certain conditions: Virginia; authorizing towns to loan or give money or credit to profit corporations: New Hampshire.

4. *Debts*—Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligations of any person or corporation: Arizona, California, Idaho, Maryland (unless recommended by the governor or officers of the Treasury Department), Montana, Nevada, New Mexico, North Dakota, South Dakota, Virginia, Washington, Wyoming; providing or changing methods for the collection of debts: Louisiana, Missouri, Oklahoma, Pennsylvania, Texas, Virginia.

5. *Descent*—Changing the law of descent, succession or distribution: Alabama, Arizona, California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, West Virginia, Wyoming.

6. *Disabilities*—(a) *Age:* It is not allowable to declare any individual to be of age in California, Colorado, Idaho, Kentucky, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Washington and Wyoming. (b) *Removal of disability:* The disabilities of an infant, feme covert or others under legal disability may not be removed by a special act of the legislature for one or more of these categories in Alabama, Florida, Kentucky, Louisiana, Minnesota and Mississippi. (c) *Sales:* The sale, mortgage, or disposition of property, usually real estate, notwithstanding disabilities, may not be permitted in private or special cases by the legislatures of Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

7. *Ditches*—The general assembly of Delaware may not pass any local or special laws relating to ditches.

8. *Divorce*—The granting of divorce by legislatures (and in Delaware and North Carolina, the allowance of alimony) is forbidden by the constitutions of all states except Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

and Vermont. In South Carolina, neither general nor special laws may be enacted on this subject. In Georgia, divorces are granted by courts only on verdicts of two juries at different terms of court.

9. ***Elections***—(a) *Voting places:* Designating the places of voting: Alabama, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexio, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, West Virginia, Wyoming. (b) *Right to vote:* Restoring the right to vote (also see Citizenship, restoration of rights): Alabama, California. (c) *Conduct of election:* Providing for the conduct of elections: Alabama, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, West Virginia, Wyoming. (d) *County and township officials:* Regulating the election of county and township officers: California, Idaho, Indiana, Nebraska, Nevada; boards of supervisors in townships, cities and towns: Illinois, Indiana; providing districts for the election of justices of the peace and constables in Mississippi; in other states, changing the boundaries in voting districts; appointment of justices of peace: North Carolina.

10. ***Eminent Domain***—Concerning the power to exercise the right of eminent domain: Mississippi.

11. ***Estates***—(a) *Affecting the estates of deceased persons in general (also see disabilities):* Arizona, California, Florida, Idaho, Kentucky, Mississippi, Montana, North Dakota, Wyoming. (b) *Of minors:* Arizona, California, Florida, Idaho, Kentucky, Louisiana, Minnesota, Missouri, Montana, Oklahoma, Pennsylvania (except on notice to parties of interest), Texas, Virginia. (c) *Other persons under disability:* California, Florida, Idaho, Kentucky, Louisiana, Minnesota, Missouri, Montana, North Dakota, Oklahoma, Pennsylvania (except on notice to parties of interest), Texas, Virginia (for the sale of estate), Wyoming.

12. ***Exclusive Privileges, Grants and Immunities***—Granting to any corporation, association or individual any special or exclusive privilege or immunity: Arizona, California, Colorado, Illinois, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York,

North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Wyoming; granting land: Mississippi.

13. *Exemptions (Other than Taxes)*—From the operation of general laws: Alabama, Mississippi, Tennessee; from jury, road or other civil duty: Mississippi.

14. *Fees, etc.*—Regulating the fees, salaries, percentages and/or allowances of various public officers including justices of the peace, constables, aldermen, etc.: Alabama, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, South Dakota, Texas, Utah, Virginia, Wyoming.

15. *Financial Institutions*—The chartering of banks, insurance, loan and trust companies is not permitted as a special or private law in Montana, New Mexico or Wyoming.

16. *Fences*—Fencing and running at large of livestock: Delaware, Kentucky, Mississippi, Virginia.

17. *Game*—For the protection of fish and/or game: Colorado, Illinois, Kentucky, Mississippi (right to have a fish trap), Nebraska, North Dakota, South Carolina.

18. *Heirs*—Constituting one person the heir of another: South Dakota, Utah, Washington, Wisconsin.

19. *Individuals*—Providing special laws for the benefit of individuals. Arkansas, Tennessee.

20. *Instruments*—Giving effect to informal or invalid wills and deeds: Alabama, Arizona, California, Colorado, Florida, Idaho, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana (deeds only), Nevada, New Mexico, North Carolina, North Dakota (deeds only), Oklahoma, Texas, Washington, Wyoming (deeds only). Authorizing deeds to be made for lands sold for taxes: West Virginia.

21. *Interest Rates*—Fixing the rate of interest: Alabama, Arizona, California, Colorado, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, West Virginia, Wyoming.

22. *Judgments*—Providing or changing methods for the enforcement of judgments: Louisiana, Missouri, Oklahoma, Pennsylvania, Texas, Virginia.

23. *Judicial Sales*—Prescribing the effects of judicial sales in real estate: Louisiana, Missouri, Oklahoma, Pennsylvania, Texas, Virginia.

24. *Juries*—Summoning and impanelling grand or petit juries: Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Carolina, Texas, West Virginia, Wyoming; relating to pay of jurors: North Carolina.

25. *Jurisdictions and Duties*—Fixing or changing the jurisdiction or duties of one or more of the following officials: justices of the peace: Arizona, California, Colorado, Idaho, Illinois, Indiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Wyoming; police judges and constables: California, Colorado, Idaho, Illinois, Indiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Wyoming; any class of officers except municipal: Florida; of the courts: Kentucky, Pennsylvania, Texas; authorizing officers to appoint deputies: Kentucky; aldermen: Missouri; extending powers and duties: Oklahoma, Pennsylvania; any judicial tribunal: Pennsylvania, Texas; granting from the treasury of the state, or from the treasury of any political subdivision, extra compensation to any public officer, servant, agent or contractor: North Carolina.

26. *Labor*—To regulate labor, trade, mining or manufacturing: Kentucky, Missouri, Pennsylvania, Texas, Virginia; also agriculture (but not mining): Louisiana.

27. *Legal Procedure*—(a) *Venue:* Providing for a change of venue in any case: Alabama, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Virginia, Wyoming. (b) *Evidence:* Changing the rules of evidence: Arizona, Colorado, Louisiana, Missouri, Montana, New Mexico, North Dakota, Texas, Virginia, Wyoming. (c) *Practice:* Regulating practice before and jurisdiction of courts of justice: Arizona, California, Colorado, Florida (except civil courts), Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North

Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wyoming. (d) *Actions, limitations of:* Alabama, Arizona, California, Colorado, Idaho, Kentucky, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Washington, Wyoming. (e) *Court relief:* No special legislation is allowed where courts have the jurisdiction to grant the relief, in Arkansas, Mississippi, Pennsylvania and West Virginia; nor in any matter concerning criminal or civil actions in Louisiana; and Nevada, for the punishment of crimes and misdemeanors. (f) *Establishment of courts inferior to the superior court:* North Carolina.

28. *Liens*—Creating, extending or impairing liens: Alabama, California, Idaho, Kentucky, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania, Texas, Wyoming.

29. *Liners*—Declaring who shall be liners between precincts or counties: Alabama.

30. *Liquor*—To provide a means of taking a census of the people of any city, town, district, precinct or county whether they wish to authorize, regulate or prohibit therein the sale of vinous, spirituous, or malt liquors, or alter the liquor laws: Kentucky.

31. *Name*—Providing for a change of name, mostly of individuals but also in some instances including places, lakes, rivers: Alabama, Arizona, Arkansas, California, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina (cities, towns and townships only), North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia (corporations and associations), Washington, Wisconsin, Wyoming.

32. *Political Sub-divisions*—(a) *Boundaries:* Providing for the changing of boundaries: Iowa (unless election provided for), Kentucky, Missouri, New Mexico (except in creating new counties including new municipalities or amending the charter), North Carolina (township lines), Pennsylvania, Washington. (b) *Charters:* Incorporating cities, towns, villages, or other subdivisions: Alabama, Arizona, Illinois, Iowa, Louisiana (with many exceptions), Missouri, Nebraska, New York (villages only), North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota,

Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming. (c) *Charter change:* Amending, confirming or extending the charters of private municipal corporations: Alabama, Illinois, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, Wyoming. (d) *County seats:* Changing or locating a county seat: Alabama, Arizona, California, Colorado, Idaho (unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed), Illinois, Iowa, Kentucky, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington (not to apply to creating new counties), West Virginia, Wisconsin, Wyoming. (e) *Creating offices:* Providing for the creation of local offices: California, Idaho, Minnesota, Missouri, Montana, North Dakota, Oklahoma, Pennsylvania, Texas, Wyoming. (f) *Election of board of supervisors in townships, cities and towns:* Illinois, Indiana, Minnesota, New York, North Dakota. (g) *Local business:* Regulating county and township business: California, Colorado, Idaho, Illinois, Indiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, Wyoming; appointing local officers or commissions to regulate municipal affairs: New Jersey; providing for the bonding of cities, towns, precincts, school districts or other municipalities: Nevada. (h) *Powers and duties:* Prescribing the powers or duties of officers in counties, cities, townships, election or school districts: California, Idaho, Minnesota, Missouri, Montana, North Dakota. (i) *Securities:* Authorizing the issuance of securities without previous vote: Alabama.

33. ***Property—Sale of Property of Individuals or Estates***—(a) *Generally:* Alabama, Colorado, Florida, Kentucky, Michigan. (b) *Same, of persons under disability:* Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, West Virginia, Wisconsin, Wyoming. (c) *Church or charitable property:* West Virginia.

34. ***Punishment***—Fixing punishment: Alabama, Arizona, California, Florida, Idaho, Indiana, Kentucky, Montana,

Nevada, New Mexico, North Dakota, Oregon, Utah, Virginia, Wyoming.

35. ***Pensions and Welfare***—Providing for the granting of pensions: Virginia; relating to health, sanitation and the abatement of nuisances: North Carolina.

36. ***Railroads***—(a) *Granting anyone the right to lay railroad tracks:* Colorado, Illinois, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Wyoming. (b) *Street passenger railroads in towns or cities:* Louisiana, Mississippi, New York (except with property owners' consent, etc.), North Dakota. (c) *Incorporation of railroads or other works of internal improvement:* Oklahoma, Texas; also including educational, religious, charitable, social, manufacturing or banking institutions not under the control of the state: South Carolina.

37. ***Refunds***—Refunding monies legally paid into the state treasury: California, Idaho, Kentucky, Louisiana, Maryland, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, Virginia, Wyoming.

38. ***Remission of Fines***—Remitting fines, penalties and forfeitures: Alabama, Arizona, California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico (or taxes), North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia, Wyoming.

39. ***Roads, Bridges, Ferries, Streams and Public Lands*** —(a) *Bridges:* Relating to bridges or chartering or licensing bridge companies: Alabama, California, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, Wyoming. Of the foregoing states, inter-state bridges are excepted in Louisiana, Missouri, New York, Oklahoma, Pennsylvania, Texas, Utah. (b) *Ferries:* Relating to chartering, licensing or establishing ferries: Alabama, California, Colorado, Florida, Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming. Interstate ferries are excepted in Washington and Wisconsin. (c) *Land:* Vacating town plats and/or public grounds: Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kentucky, Mississippi, Missouri, Mon-

tana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, West Virginia, Wyoming. Of the foregoing, "laying out" is also mentioned in Arizona, California, Idaho, South Dakota and Utah. Public squares are included in Arizona, Indiana, Iowa, Nevada, and Oregon; cemeteries in California, Idaho, Kentucky, Missouri, Oklahoma, Pennsylvania and Texas; parks in California and Idaho; releasing title to forfeited lands in West Virginia; granting any lands under control of the state to any person or corporation in Alabama and Mississippi. (d) *Roads:* Authorizing the laying out, opening, altering, maintaining, or vacating of roads, highways, turnpikes, streets and alleys. Some of the constitutions mention "laying out" only, others "vacating" only. Of the states which have the foregoing general provisions but are irregular in one way or another regarding the omission or inclusion of words, North Carolina, South Dakota and Utah do not mention roads; Arizona, Arkansas, Florida, Nevada, South Dakota do not mention highways; Florida, New York, Washington and Wisconsin omit streets; Florida, Washington and Wisconsin do not mention alleys; only Delaware uses the term "lane"; Arkansas, Florida, Kentucky, and Nevada refer to "vacating" only, while Louisiana, New York, North Carolina, Washington and Wisconsin only mention "laying out." With these exceptions, the following states include this prohibition in their constitutions: Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming. (e) *Streams:* Declaring streams navigable or relating to or constructing water courses, booms, dams or obstructions: Kentucky, North Carolina and Virginia. In New York the drainage of swamps and low lands is prohibited. (f) *Tolls:* The chartering or licensing of toll bridges or toll roads: the bridge group is Colorado, Illinois, Kentucky, Nebraska, New Mexico, North Dakota and West Virginia; the road group is Kentucky, Montana, New Mexico, North Dakota and Wyoming. (g) *Miscellaneous:* Fences are mentioned in Delaware, Kentucky and Mississippi; ditches in Delaware; and turnpikes in Kentucky. The legislature may provide local or special legislation for state roads

extending into more than one county and military roads in New Mexico, Washington and Wisconsin. New York permits special legislation on bridges on the Hudson below Waterford, on the East River, or over waters forming a boundary of the state.

40. *Schools*—(a) *Management:* Providing for the management of common schools: California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Washington, Wyoming. (b) *Boundaries:* Creating or changing boundaries of districts: Alabama, Delaware, North Carolina, South Carolina. (c) *School funds:* Providing for the support and preservation of school funds: Indiana, New Jersey, Oklahoma, Oregon. (d) *School houses:* Providing for building or repairing of school houses and the raising of money therefor: Louisiana, Minnesota, Missouri, Oklahoma, Pennsylvania, Texas. (e) *Bonding:* Providing for the bonding of cities, towns, precincts, school districts or other municipalities: Nebraska. (f) *Apportionment:* Providing for the apportionment of any part of the school fund: Washington, Wisconsin.

41. *Strays*—Regulating the straying or running at large of livestock: Delaware, Kentucky, Mississippi, Virginia.

42. *Swamps*—Drainage of swamps or other low lands: New York.

43. *Taxation*—(a) *Assessment or collection:* Alabama, Arizona, California, Idaho, Kentucky, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Oregon, Utah, Virginia (except dangerous animals), Washington, Wisconsin, Wyoming. (b) *Assessment or collection for state, county, township or road purposes:* Florida, Indiana, Iowa. (c) *Discharge:* To give any indulgence or discharge to any assessor or collector of taxes or to his sureties: Kentucky, Louisiana, Missouri, North Carolina, Oklahoma, Texas. (d) *Exemption of property from taxation, levy or sale:* Alabama, California, Idaho, Louisiana, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Texas, Virginia, Wyoming. (e) *Private purposes:* Authorizing public taxation for private purposes: Minnesota. (f) *Time:* Extending the time for collections: California, Idaho, Louisiana, Maryland, Minnesota, Missouri, Montana, North Carolina, North Dakota,

Oklahoma, Texas, Virginia, Washington, Wisconsin, Wyoming. (g) *Releasing taxes:* West Virginia.

44. ***Validation***—Providing for validation of the invalid acts of officials: California, Idaho, Kentucky, Louisiana, Missouri, North Dakota, Washington.

45. ***In General***—In the following states named, this general provision is added: "In all other cases where a general law can be made applicable, no special law shall be enacted": Alabama, Arizona, Arkansas, California, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, Texas (except as to game and fish), Utah, West Virginia, Wyoming. It is sometimes provided that it shall be a judicial question whether a general law would have sufficed and in such case the legislature is given no right to pass contrary laws depriving the court of their sole right to decide whether or not a special law is in order.

¶ 134. Limitation by Bills of Rights

Further limitations on the powers are contained in provisions usually referred to as the bill of rights. The model is the first ten amendments to the Constitution of the United States, ratified December 15, 1791 (there were originally twelve but two were rejected). These amendments are as follows:

Freedom of Religion and of the Press. The first article provides that Congress shall make no law respecting an establishment of religion, or prohibit its free exercise, or abridge the freedom of speech, or of the press, nor the right of the people peaceably to assemble and to petition the government for a redress of grievances. Similar provisions relative to the establishment of religion, or appropriating public money or property to apply to religious worship, exercise or instruction, or to support any religious establishment, and to freedom of religious worship exist in all states. The provision for freedom of speech and of the press is also part of all the state constitutions except those of Delaware, Massachusetts, North Carolina and Rhode Island which only mention the press.

Right to Bear Arms. The second article of amendment to the United States Constitution provides that, a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. All state constitutions have similar provisions except those of Cali-

fornia, Delaware, Illinois, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia and Wisconsin.

Quartering of Soldiers. The third article provides that no soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, except in a manner to be prescribed by law. The states have similar provisions regarding this subject or against the maintenance of a standing army except by consent of the legislature, or providing for its subordination to civil authorities in all states except New York.

Searches and Seizures. The fourth article provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. Only New York fails to mention this guarantee in the constitution.

Double Jeopardy and Other Rights of Accused. The fifth article provides that no persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Every state constitution has similar provisions. However, double jeopardy is not mentioned in Connecticut, Maryland, Massachusetts, North Carolina or Vermont, and the provisions against self-incrimination are omitted in New Jersey.

Criminal Trials. The sixth article of amendment to the United States Constitution provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Civil Trials. The seventh amendment to the United States Constitution provides that in suits at common law, where the

value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law. Parts of or all of the two foregoing amendments are contained in the constitutions of all states.

Bail—Unusual Punishments. The eighth article of amendment provides that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. All states have similar provisions. Only Illinois fails to mention excessive bail but does mention the right to bail. The limitation in this state appears in the body of the constitution rather than in the bill of rights.

Reserved Rights. The ninth article provides that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. State constitutions provide the same except in Connecticut, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Vermont and Wisconsin.

Miscellaneous. The state constitutions contain provisions regarding "inalienable rights" derived from the Declaration of Independence, a sample of which, taken from the West Virginia constitution, Article III, section 1, reads:

> "All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Similar provisions are a part of the constitutions of all states except Arizona, Connecticut (mentions that "all men are equal"), Delaware, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah and Washington.

A declaration that all power is inherent in the people, and that all free governments are founded on their authority, and instituted for their peace, safety and happiness, that for the advancement of these ends they have at all times an inalienable and indefeasable right to alter, reform or abolish the government in such manner as they think proper, also adopted from the Declaration of Independence, appears in the constitutions of all

states except Illinois, Nebraska, New York, West Virginia and Wisconsin.

Provisions against bills of attainder and ex post facto laws, as forbidden by Section 9 of Article I of the United States Constitution, are also forbidden by the constitutions of all states, except those of Connecticut, Delaware, Kansas, New Hampshire, New Jersey, New York, Ohio, Vermont and Virginia, which do not mention ex post facto laws, and those of Illinois, Kansas, Louisiana, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Vermont and Virginia, which do not mention bills of attainder.

The federal Constitution provides that the privilege of the writ of habeas corpus shall not be suspended unless in cases of rebellion or invasion the public safety may require it. Similar provisions obtain throughout the states except in Maryland, New Hampshire, Vermont and Virginia constitutions.

Imprisonment for debt is forbidden by the constitutions of all states except Connecticut, Delaware, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, Virginia and West Virginia.

The right to counsel is guaranteed by the constitutions of all states except Kentucky, Vermont and Virginia.

Treason, in Article III, Section 3 of the United States Constitution, is defined as consisting only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort. It is also provided that no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court; that Congress shall have power to declare the punishment of treason, but that no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. Similar clauses appear in the constitutions of most states, but not in those of Connecticut, Delaware, Idaho, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia and West Virginia.

The right to bear arms is not mentioned in the constitutions of California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Virginia, West Virginia and Wisconsin.

The due process of law provision appears in the constitutions of all states except Oregon.

The new New Jersey constitution guarantees the right to organize and bargain collectively in private employment, but limits the right to organize and to make known grievances and proposals in public employment.

¶ 135. Titles

The title of a bill ought to be a clear and reasonably comprehensive indicator of the purport of the act, and it has been so held;[9] but though constitutions and statutes generally require, and courts in exceedingly voluminous litigation consider, that a bill shall cover but one subject "which shall be clearly expressed in its title," as a means of conveying to the legislators and other interested parties just what the bill purports to do, titles nevertheless frequently leave much to be desired. Sometimes they comply with the letter of the requirement, ignoring the spirit and forgetting the *raison d'etre*. If a title necessitates reading the whole bill to find out what it is about, in other words, if it is an inadequate "label" [10] it serves little or no useful purpose, and yet this is true of many titles including those approved by the courts.

The best examples of short meaningless titles are those of bills of the state of Rhode Island. The titles of these bills, when they amend an existing law, which most of them naturally do, supply no information concerning the purpose of the bill other than that some kind of amendment to some part of a general topic is sought. An example is "An Act in amendment of Section 10 of Chapter 164 of title XX of the General Laws of 1938 as amended, entitled 'Alcoholic beverages'." On the other hand, the length of the titles is by no means necessarily of any assistance to the reader in gleaning quick useful information as to the contents. Some titles are many hundreds of words long, by this means alone defeating one of the primary purposes of a good title, namely, that of making unnecessary a close examination of the bill itself to understand its general purpose. These long titles may be nothing more than a recitation of the bill amended, preceded by the words "An Act to amend an act entitled." In such instances, every time such an act is amended, all previous phrases which have been incorporated in the title of the law "An Act to amend an act entitled" will be repeated *ad infinitum*.

The requirements for titles in the state of New York result in models for the entire country. The Assembly rules provide

[9] State v. Sloan, 258 Mo. 305, 167 S. W. 500.

[10] Bonlewsky v. Lodi Polish Home, 103 N. J. Law 323, 136 Atl. 741.

that every bill introduced shall, by its title, briefly indicate the purpose of the proposed law. If the bill proposes to amend an existing law, it must contain the number of the chapter, the year in which it was enacted, and the title of the statute to be amended together with a brief reference to the subject matter of the proposed amendment, except that, instead of specifying the chapter, year and title of the statute to be amended, the title of a bill proposing amendment of any of the codes is required to quote the descriptive name of the code; and the title of a bill proposing amendment to a chapter of the consolidated laws, the New York City charter or any act having a short title, may quote the short title of such law. This rule in itself is not the controlling cause of the excellent titling which, in indifferent or less competent hands, might conform to the letter of the rule and yet not produce so effective a title. The titles of bills in New York answer briefly the question: "What does this bill propose to do?" and the answer is in such a form that the reader acquires some definite information of the net result of its enactment. The Rhode Island title cited above also answers the question: "What does the bill do?" but for the knowledge it imparts, it might almost as well have been omitted. Note, by contrast, the example of a characteristic New York title:

> "To provide for the general welfare and to protect the health, efficiency, and general well-being of workers in the state of New York by providing for the elimination of wage and hour standards detrimental to the health, efficiency, and general well-being of all workers, to prescribe minimum wage and maximum hour standards, and to provide for the further determination and establishment of minimum wages and supporting standards by occupation; to provide for enforcement of such provision and to prescribe the powers and duties of the department of labor under this act; and to prescribe penalties for violations of this act or of orders or regulations of the industrial commissioner authorized hereunder."

Missouri is an example of a state with moderately long and meaningless titles while Alabama is an example of a state in which many titles are exceedingly long, and sometimes meaningless. The federal rules govern only bills providing for appropriations. The states generally require that all bills shall relate to but one subject to be expressed in the title, but this requirement does not make good titles out of bad ones. Generalities, prolixity and vagueness are widely committed. In New Jersey, in addition to the title, many introducers append a statement of the object of the bill, which is a highly useful expedient. Florida

House rule 41 is characteristic in whole or in part of those of some other states. All bills, under this rule, must contain a "proper" title and enacting clause as required by the constitution, and must embrace but one subject, and matter properly connected therewith, which subject must be briefly expressed in the title. If there are no constitutional provisions to the contrary, the title is not such a part of the bill that it is a necessity to its enactment.

A law enacted without a title at all has been held valid.[11] Of course, this is not true in the states where the constitution requires that the subject of each law should be set forth in the title.[12] Errors and repetitions and other defects not violating constitutional or statutory requirements will not be fatal to a law;[13] but an inadequate title, not covering all the subject matter of the bill, will invalidate at least that part of the law, in some states.[14] The courts are reluctant to nullify a law because of a defective title, but will do so where a substantive departure from a mandatory provision of the constitution has been made.[15]

¶ 136. *Requirements in General*

It is customary to provide that bills prepared for introduction must be typewritten or otherwise legibly prepared and sometimes in a definite quantity, e. g., duplicate or triplicate. Thus, Florida House rule 41 provides that all bills, resolutions and memorials shall be typewritten or printed without interlineations, on not less than one sheet of paper with suitable margins, and spaces between the several sections. Prior to the introduction of the bill, the services of a state research officer or bureau are usually available to put it in proper shape, indicate the existing statutes which it must amend, and even comment upon its constitutionality (see ¶ 152). When the bill has been properly prepared, it is usually required to be deposited in a box provided for that purpose adjacent to the clerk's desk. It is sometimes required that notice of introduction of local bills must first be published in a newspaper circulating in the locality affected and that proof of the publication must accompany the introduction.

¶ 137. Body

There is little law or regulation on the subject of the form of the body of a bill. Such matters as the kind of paper on which

[11] State ex rel. Cotter v. District Court of Lewis Clark County, 49 Mont. 146, 140 Pac. 732.

[12] Chicago B. & O. R. R. Co. v. Smyth, 103 F. 376.

[13] Terminal Drilling Co. v. Jones, 84 Colo. 279, 269 Pac. 894. Erickson v. Cass County, 11 N. D. 494, 92 N. W. 841.

[14] Turnquist v. Cass County Drain Commrs., 11 N. D. 514, 92 N. W. 852.

[15] O'Connor v. New York, 165 N. Y. S. 625. 178 App. Div. 550.

a bill must be written, the kind of writing, the number of copies, riders, bobtailing, committees on revision, reference bureaus, and other aid to good form are treated at ¶ 136, 152, 154, 206. Except for the states of Wisconsin and New York, constitutional or statutory requisites concerning that portion of a bill following the enacting clauses are infrequent and undetailed. A bill which contains non-substantive imperfections in other than the enacting clause will not usually be held invalid if the will of the legislature is clear.[16] However, if the imperfection is so important that the law cannot be properly executed, it will be held invalid.[17] Mere difficulty in putting the law into effect, however, is not sufficient to hold it unconstitutional.[18]

As we have seen (¶ 135), before a bill can become a valid law, many states require that it shall embrace but one subject, to be expressed in its title. Whether the title adequately covers the subject of the bill has been the issue in a vast number of cases.[19] Joint rules of the Wisconsin legislature, however, require that each section of any bill, except local or temporary measures, must, when practicable, refer to some section of the statute which is either thereby amended or supplemented. Paragraphs are not to exceed fifteen lines and bills must be drawn to show how old matter has been deleted and new matter added. This latter provision for showing changes in old laws by italics and underscoring is also in use in some other states, including New York, New Jersey, Pennsylvania, and California. The Wisconsin rule also makes provision for the numbering and lettering of newly inserted material in the compiled statutes. The New York Assembly rules provide that in the case of a code amendment, or an amendment to the penal law, to one of the consolidated laws, or to the New York City charter, the first section must contain a descriptive name of the code or short title of such law and the section of the code or the law proposed to be amended; if any other law, the section and chapter of the statute proposed to be amended, the year of its enactment and the title of such statute, and if such title has been amended, the chapter and year of the last amendatory act. In every case, the first section must contain the chapter and the year of the last act, if any, amendatory of the section proposed to be amended, and the chapter and year of any act renumbering or adding a section or portion of the acts proposed to be amended.

[16] State v. Caldwell, 170 La. 851, 129 So. 368.

[17] Hughes Case, 1 Bland 46 (Md.). People v. Briggs, 193 N. Y. 457, 86 N. E. 522.

[18] People v. Goldfogle, 242 N. Y. 277, 151 N. E. 452.

[19] 59 C. J. pp. 804-849.

Where a bill proposes to amend more than the one section of a law, the New York Assembly rule provides that each section after the first must refer to "such code," "such chapter," or "such charter" proposed to be amended and must state the chapter and the year of the last act, if any, amendatory of such section. It is also provided in these rules that new matter to be inserted in a bill amending, adding or repealing an existing law must be shown in italics, while old matter to be eliminated by amendment must be inserted in its proper place enclosed in boldface brackets, and the rules of both houses of the New York legislature provide that the word "repealed," when any existing law or part thereof is proposed to be repealed, must be printed in boldface type. In New York, the bills are reprinted when amended and upon reprinting, whenever a bill is amended by eliminating proposed new matter, such new matter is omitted in the reprint in order to avoid confusion.

Many bills purport to amend prior laws. They may not, however, attempt to amend a repealed or nonexistent statute,[20] but some cases hold that the mere attempt to amend such a law will not invalidate a new one if the matter can stand on its own feet.[21] The act to be amended must be adequately identified, and reference to an unofficial compilation of the law has been held insufficient.[22] The Georgia constitution requires not merely identification of the law amended, but also: "The amending or repealing act shall distinctly describe the law to be amended or repealed as well as the alteration to be made." [23] Tennessee requires that the "Title or substance" of the amended, repealed or revived law be "recited in the caption or otherwise." [24]

The usual provision is that bills must contain only one "subject", but this is held to include any relevant matter if a single purpose is always kept in sight.[25] So a code, containing a variety of subjects, is "single" for the purpose of codification or recodification.[26]

¶ 138. Formal Clauses

The enacting clause is usually regarded as a necessary part of every valid measure.[27] This is obvious where the constitution

[20] State v. O'Brien, 95 Ohio St. 166.
[21] People v. Jefferson County Canvassers, 143 N. Y. 84, 37 N. E. 649. Commonwealth v. Chesapeake, etc., R. R. Co., 118 Va. 261, 87 S. E. 622.
[22] Lipscomb v. Kaloroukas, 133 So. 107 (Fla.).
[23] Georgia Constitution, Article III, Sec. VII, Par. XVII.
[24] Tennessee Constitution, Article II, Sec. 17.
[25] Vroman v. Fish, 170 N. Y. S. 421, 181 App. Div. 502.
[26] State v. Nelson, 146 Wash. 17, 261 Pac. 796.
[27] In re Government Seat, 1 Wash. Terr. 115.

so provides. But there are states where the contrary has been held.[28] If a bill passes the legislature without an enactment clause, the defect cannot be cured by adding it at some later time.[29] On the other hand, the converse is true, namely, the irregular obliteration of the enacting clause will not affect the validity of a bill where it has been properly adopted.[30] Its form is provided by the several constitutions, e. g., "Be it enacted by the people (or legislature, or general assembly, etc.) of the state of . . .". The enacting clause to concurrent resolutions may read "Be it resolved by the House of Representatives, the Senate concurring" or "Be it resolved by the legislature of the state of . . . . . " etc. Some states do not give the effect of law to a measure with an enacting clause in resolution form (see ¶ 130). In such states, if a bill without this clause is signed by the governor, its effect is a nullity and it must be reenacted in order to be effective, with the clause written in.

Preambles are not necessary and appear very infrequently. They do not alter the scope of the act itself but they might be useful in interpreting or giving legislative intent to obscure wording or passages.[31] The same may be said of headings and marginal notes.[32] A clause specifying the effective date is not necessary to the validity of an act, because in its absence the law will take effect according to the statute or constitution of the state. If the clause declares an emergency and makes the law effective at once, it usually must be passed by a larger vote, and if not so passed, the clause is invalid and the law is effective at the same time as bills which do not carry such clauses.[33] A characteristic emergency clause is as follows:

> "It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in full force from and after its passage and approval."

It is customary for the legislature to insert what is known as a "saving clause", especially in bills of a relatively new or untried nature. This clause reads substantially as follows:

> "If any section or provision of this act is held unconstitutional, the remaining provisions shall continue in full force and effect."

[28] State v. Reilly, 88 N. J. Law 104, 95 A. 1005.
[29] People v. Dettenthaler, 118 Mich. 595, 77 N. W. 450.
[30] State v. Wright, 14 Ore. 365, 12 Pac. 708.
[31] People v. Chicago & E. I. Ry. Co., 296 Ill. 246, 129 N. E. 846.
[32] Bettencourt v. Sheehy, 157 Cal. 698, 109 Pac. 89.
[33] Keator v. Whittaker, 104 Tex. 628, 143 S. W. 607.

A general repealer clause is usually added to new laws reading:

> "All laws and parts of laws in conflict herewith are hereby repealed."

¶ 139. Tax Legislation

Twenty-one states (Alabama, Colorado, Delaware, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Wyoming) and the federal government provide that bills levying a tax may only be introduced in the lower house. This custom sometimes applies to appropriation bills though it has been held that where there is no specific prohibition against the introduction of appropriation bills in the Senate, it does not necessarily follow that such a bill is invalid even though it may be necessary to raise revenue for such appropriations by the passage of a tax measure.[34] There are a number of other classes of measures which have been held valid in spite of the fact that they did not originate in the House of Representatives. Many of such measures merely permitted the levy of taxes rather than actually imposing them.[35] License bills, though levying a tax or fee, have been held proper though originating in the Senate.[36] Even a Senate bill requiring all insurance companies doing business in the state to pay to the commissioner of insurance a percentage of the premiums received has been held not to be invalid and not to be in the nature of a revenue bill.[37]

The theory that the House is to originate tax measures has its origin in English law and tradition. The House of Commons represents the people and the money was not to be taken from them for the support of the government without the consent of their representatives. However, the English rule goes beyond that of the American legislatures. There, appropriations also must originate in the House, but the American rule is that the restriction applies only to the "appropriation" of money from the people, not from the state. The Senate may therefore properly initiate an appropriation from the treasury. Other bills proper for introduction in the Senate include those which grant political subdivisions the right to levy a tax.[38] There are many other instances where the tax or fee is an incident to the principal

[34] In re Opinion of Justices, 126 Mass. 557.

[35] Mumford v. Sewall, 4 T. 585, 11 Ore. 67.

[36] Ex Parte Sales, 108 Okla. 29, 233 Pac. 186.

[37] Colorado National Life Assurance Co. v. Clayton, 130 Pac. 330, 54 Colo. 256.

[38] Harper v. Elberton, 23 Ga. 566.

object which had been held properly introduced in the Senate, mostly of a regulatory or permissive nature. There is no objection to the Senate proposing amendments to bills which provide or change taxes if they have originated in the House.

¶ 140. Who May Introduce

The rule is that only a duly elected member of the legislature has a right to present bills for the consideration of that body. There are, however, certain exceptions or quasi-exceptions. In states where the initiative is in effect, the intervention of a legislator is not required, and bills which have been initiated and fulfilled the legal formalities are submitted by the secretary of state directly to the legislature. The governor of Massachusetts has the power to submit messages on which proposed measures are based and these documents are numbered and considered along with the other bills without the intervention of a legislator. State departments and legislative counsel everywhere must introduce bills through a legislator. Where bills are introduced through petition, the actual introduction must nevertheless be made by a legislator. Recommendations of legislative councils in eight states must be likewise introduced by a legislator, but in Massachusetts, where state departments, before each session, file proposed bills, these are automatically introduced, when the session convenes, under their own name and without a legislator's sponsorship.

¶ 141. Steps Prior to Introduction

In the state of Montana, and in the Nevada Senate, the rules require at least one day's notice of intent to introduce all measures except where such notice is waived by consent of two-thirds of the members of the house of origin. In Massachusetts, it is customary for individual citizens and groups to petition their representatives in the General Court to introduce measures, and more bills are introduced in this way than on the initiative of the representatives themselves. These petitions, accompanied by the proposed bill, must be filed on or before the first Wednesday in December of the year preceding the meeting of the General Court (see Chapter 20 on Massachusetts procedure). Massachusetts bills which have been "referred to the next annual session" by the preceding session of legislature must be reintroduced by taking such bills out of the files, but in the absence of such affirmative act, introduction is not accomplished. In South Carolina, and in Congress where the legislature meets annually, work is divided into two sessions (one a year), and bills continued

from the first session may be considered at the second, retaining their position from the preceding year without the necessity of reintroduction.

¶ 142. Publication of Local Laws

Some states require that before a local law can be passed, and sometimes before it may even be introduced, notice of the intention of proposing such a law must be published in local newspapers in the locality affected and proof of such publication submitted to the legislature. In Alabama, if this is not done and the proof appear in the journal, it is mandatory upon the courts to declare such laws to be void. It is therefore customary to accompany such introduction with "Notice and Proof of Publication." Georgia House rule 162 is a good example of this type of requirement. It reads as follows:

> "No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the newspaper in which the Sheriff's advertisements for the locality affected are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly. No local or special bill shall become law unless there is attached to and made a part of said bill a copy of said notice certified by the publisher, or accompanied by an affidavit of the author, to the effect that said notice has been published as provided by law. No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person of the jurisdiction affected in a referendum on the question.[1] Where any local law shall add any member or members to any municipal or county governing authority, the members of which are elected by the people, such local law must provide that the member or members so added must be elected by a majority vote of the qualified voters of the political subdivision affected."

The affidavit, of course, must be signed to be valid, but a signature is not necessary to the published notice of intention.

[1] Incomplete in official edition. CCH.

TABLE OF CONSTITUTIONAL RESTRICTIONS ON THE PASSAGE OF SPECIAL AND LOCAL LEGISLATION

(The figures given below refer to the subjects described in paragraph 133)

Alabama	1a, 1c, 3, 5, 6b, 8, 9a, 9b, 9c, 13, 14, 20, 21, 27a, 27d, 28, 29, 31, 32b, 32c, 32d, 32i, 33a, 34, 38, 39a, 39b, 39c, 40b, 43a, 43d, 45.
Arizona	4, 5, 8, 9c, 11a, 11b, 12, 20, 21, 24, 25, 27b, 27c, 27d, 31, 32b, 32d, 34, 38, 39c, 39d, 43a, 45.
Arkansas	1a, 1c, 8, 19, 27a, 27e, 31, 39d, 45.
California	1a, 1b, 1c, 2, 4, 5, 6a, 8, 9a, 9b, 9c, 9d, 11a, 11b, 11c, 12, 14, 20, 21, 24, 25, 27a, 27c, 27d, 28, 31, 32d, 32e, 32g, 32h, 34, 37, 38, 39a, 39b, 39c, 39d, 40a, 43a, 43d, 43f, 44, 45.
Colorado	1b, 5, 6a, 6c, 8, 9a, 9c, 12, 14, 17, 20, 21, 24, 25, 27a, 27b, 27c, 27d, 32d, 32g, 33a, 33b, 36a, 38, 39b, 39c, 39d, 39f, 40a, 45.
Connecticut	None.
Delaware	7, 8, 16, 39d, 39g, 40b, 41.
Florida	1a, 1c, 6b, 6c, 8, 9a, 9c, 11a, 11b, 11c, 14, 20, 24, 25, 27a, 27c, 31, 33a, 33b, 34, 39b, 39d, 43b.
Georgia	8, 45.
Idaho	1a, 1b, 1c, 2, 3, 4, 5, 6a, 6c, 8, 9a, 9c, 9d, 11a, 11b, 11c, 14, 20, 21, 24, 25, 27a, 27c, 27d, 28, 31, 32d, 32e, 32g, 32h, 33b, 34, 37, 38, 39a, 39b, 39c, 39d, 40a, 43a, 43d, 43f, 44.
Illinois	5, 6c, 8, 9a, 9c, 9d, 12, 14, 17, 21, 24, 25, 27a, 27c, 31, 32b, 32c, 32d, 32f, 32g, 33b, 36a, 38, 39b, 39c, 39d, 39f, 40a, 45.
Indiana	6c, 8, 9a, 9c, 9d, 14, 21, 24, 25, 27a, 27c, 31, 32f, 32g, 33b, 34, 39c, 39d, 40c, 43b.
Iowa	8, 31, 32a, 32b, 32d, 39c, 39d, 43b, 45.
Kansas	8, 45.
Kentucky	1a, 1c, 2, 3, 5, 6a, 6b, 6c, 8, 9a, 9c, 11a, 11b, 11c, 14, 16, 17, 20, 21, 24, 25, 26, 27a, 27c, 27d, 28, 30, 31, 32a, 32d, 33a, 33b, 34, 36a, 37, 38, 39a, 39b, 39c, 39d, 39e, 39f, 39g, 40a, 41, 43a, 43c, 44, 45.
Louisiana	1a, 1c, 3, 4, 5, 6b, 8, 9a, 9c, 11b, 11c, 12, 20, 21, 22, 23, 26, 27a, 27b, 27c, 27e, 31, 32b, 36b, 37, 38, 39a, 39d, 40a, 40d, 43c, 43d, 43f, 44.
Maine	45.
Maryland	4, 6c, 8, 20, 31, 33b, 37, 43f, 45.
Massachusetts	None.
Michigan	8, 33a, 45.

Minnesota	1a, 1b, 1c, 3, 5, 6a, 6b, 8, 9a, 9c, 11b, 11c, 12, 20, 21, 25, 31, 32d, 32e, 32f, 32g, 32h, 38, 39d, 40a, 40d, 43d, 43e, 43f, 45.
Mississippi	1a, 1c, 5, 6b, 6c, 8, 9d, 10, 11a, 12, 13, 14, 16, 17, 21, 24, 25, 27a, 27c, 27e, 31, 33b, 36a, 36b, 39a, 39b, 39c, 39d, 39g, 40a, 41, 43d, 45.
Missouri	1a, 1b, 1c, 3, 4, 5, 6a, 9a, 9c, 11b, 11c, 12, 14, 20, 21, 22, 23, 24, 25, 26, 27a, 27b, 27c, 27d, 28, 31, 32a, 32b, 32d, 32e, 32g, 32h, 36a, 37, 38, 39a, 39b, 39c, 39d, 40a, 40d, 43a, 43c, 43d, 43f, 44, 45.
Montana	1a, 1b, 1c, 2, 4, 5, 6a, 6c, 8, 9a, 9c, 11a, 11b, 11c, 12, 14, 15, 20, 21, 24, 25, 27a, 27b, 27c, 27d, 28, 31, 32d, 32e, 32g, 32h, 33b, 34, 36a, 37, 38, 39a, 39b, 39c, 39d, 39f, 40a, 43a, 43d, 43f, 45.
Nebraska	5, 6c, 8, 9a, 9c, 9d, 12, 14, 17, 21, 24, 25, 27a, 27c, 31, 32b, 32d, 32g, 33b, 36a, 38, 39b, 39c, 39d, 39f, 40a, 40e, 45.
Nevada	4, 6c, 8, 9a, 9c, 9d, 14, 20, 24, 25, 27a, 27c, 27e, 31, 32g, 33b, 34, 37, 39b, 39c, 39d, 43a.
New Hampshire	3.
New Jersey	3, 5, 8, 12, 14, 24, 27a, 32g, 33b, 36a, 39c, 39d, 40a, 40c, 43a.
New Mexico	1a, 1b, 1c, 2, 4, 5, 6a, 6c, 8, 9a, 9c, 12, 14, 15, 20, 21, 24, 25, 27a, 27b, 27c, 27d, 28, 31, 32a, 32d, 32g, 33b, 34, 36a, 37, 38, 39b, 39c, 39d, 39f, 39g, 43a, 43d, 45.
New York	8, 9a, 9c, 12, 14, 21, 24, 27a, 31, 32b, 32d, 32f, 36a, 36b, 39a, 39d, 39e, 39g, 42, 43d.
North Carolina	1c, 2, 8, 9d, 20, 24, 25, 27f, 31, 32a, 35, 37, 38, 39a, 39b, 39d, 39e, 40b, 43c, 43f.
North Dakota	1a, 1b, 1c, 2, 4, 5, 6a, 6c, 8, 9a, 9c, 11a, 11c, 12, 14, 17, 20, 21, 24, 25, 27a, 27b, 27c, 27d, 28, 31, 32b, 32c, 32d, 32e, 32f, 32g, 32h, 33b, 34, 36a, 36b, 37, 38, 39a, 39b, 39c, 39d, 39f, 40a, 43a, 43d, 43f, 44, 45.
Ohio	8.
Oklahoma	1a, 1b, 1c, 4, 5, 6a, 9a, 9c, 11b, 11c, 20, 21, 22, 23, 24, 25, 27a, 27c, 27d, 28, 31, 32b, 32c, 32d, 32e, 32g, 36c, 37, 38, 39a, 39b, 39c, 39d, 40a, 40c, 40d, 43c, 43d, 43f.
Oregon	6c, 8, 9a, 9c, 21, 24, 25, 27a, 27c, 31, 33b, 34, 39c, 39d, 40c, 43a.
Pennsylvania	1a, 1c, 3, 4, 5, 8, 9a, 9c, 11b, 11c, 12, 14, 21, 22, 23, 25, 26, 27a, 27c, 27e, 28, 31, 32a, 32b, 32c, 32d, 32e, 32g, 37, 38, 39a, 39b, 39c, 39d, 40a, 40d, 43d.
Rhode Island	None.
South Carolina	1a, 1c, 8, 17, 24, 31, 32b, 32c, 36c, 40b, 45.
South Dakota	4, 6c, 8, 12, 14, 18, 31, 32b, 32c, 32d, 32g, 33b, 38, 39b, 39c, 39d, 40a, 45.
Tennessee	3, 8, 12, 13, 19.

TABLE OF CONSTITUTIONAL RESTRICTIONS ON THE PASSAGE OF SPECIAL AND LOCAL LEGISLATION—Continued

Texas	1a, 1b, 1c, 4, 5, 6a, 8, 9a, 9c, 11b, 11c, 14, 20, 21, 22, 23, 24, 25, 26, 27a, 27b, 27c, 27d, 28, 31, 32b, 32c, 32d, 32e, 32g, 36c, 37, 38, 39a, 39b, 39c, 39d, 40a, 40d, 43c, 43d, 43f, 45.
Utah	5, 6c, 8, 12, 14, 18, 21, 25, 27a, 27c, 31, 32b, 32c, 32d, 32g, 33b, 34, 38, 39a, 39b, 39c, 39d, 40a, 43a, 45.
Vermont	None.
Virginia	3, 4, 6c, 8, 9a, 9c, 11b, 11c, 12, 14, 16, 22, 23, 26, 27a, 27b, 27c, 31, 32d, 34, 35, 37, 39e, 41, 43a, 43d, 43f.
Washington	1a, 1b, 3, 4, 6a, 6c, 8, 18, 20, 21, 27d, 31, 32a, 32b, 32d, 33b, 38, 39b, 39d, 39g, 40a, 40f, 43a, 43f, 44.
West Virginia	5, 6c, 8, 9a, 9c, 20, 21, 24, 27c, 27e, 32b, 32c, 32d, 32g, 33b, 33c, 38, 39b, 39c, 39d, 39f, 43g, 45.
Wisconsin	3, 6c, 8, 18, 31, 32b, 32d, 33b, 39b, 39d, 39g, 40f, 43a, 43f.
Wyoming	1a, 1b, 1c, 2, 4, 5, 6a, 6c, 8, 9a, 9c, 11a, 11c, 12, 14, 15, 20, 21, 24, 25, 27a, 27b, 27c, 27d, 28, 31, 32b, 32c, 32d, 32e, 32g, 33b, 34, 36a, 37, 38, 39a, 39b, 39c, 39d, 39f, 40a, 43a, 43d, 43f, 45.

TIME LIMIT FOR INTRODUCTION OF BILLS WITHOUT SPECIAL VOTE OR SUSPENSION OF RULES IN REGULAR SESSION

Alabama ..... None.

Arizona ..... None.

Arkansas ..... Measures may be introduced *any* day except the last three days of the session.[2]

California ..... First thirty days of odd-year session. No limit in budget (even-year) session.

Colorado ..... First fifteen days of the session.

Connecticut ..... Limit customarily set by resolution or rule adopted by the legislature. The limit is usually fixed as the last Friday in January.

Delaware ..... Fixed each session by resolution.

Florida ..... Restricted by rules committee during last few days of the session.[2]

Georgia ..... Rule customarily adopted at each session. Time set varies.

Idaho ..... Rule usually adopted restricting introductions to the first thirty-five days of the session.[1]

Illinois ..... None.

Indiana ..... Fixed by rule each session. (1947-House, 30 days, Senate, 33 days.)[2]

Iowa ..... Governed by rule. (1947-Senate, 2/26, House, 2/27.)

Kansas ..... Usually fixed by rule to be about six weeks after session convenes.[2]

Kentucky ..... None.

Louisiana ..... Bills, 21 days after convening; joint resolutions for constitutional amendments, 30 days after convening; other resolutions, no limit.[2]

Maine ..... Fixed by resolution. Frequently Wednesday of the 4th or 5th week for private and special legislation, Wednesday of the 5th or 6th week for public bills and resolutions.

Maryland ..... During first 80 days.[2]

Massachusetts ..... Time limit for all introductions is in the odd numbered year. For the odd-year session the time limit is the second Friday in January. For the even-year session, the first Wednesday of the previous December.

Michigan ..... None.

Minnesota ..... No bills may be introduced during the last twenty days of the session except upon written request of the governor; this limit set by the constitution. Frequently both branches of the legislature adopt a rule limiting introductions to the first forty-five days.[1]

[1] Legislative days [2] Calendar days.

TIME LIMIT FOR INTRODUCTION OF BILLS WITHOUT SPECIAL VOTE OR SUSPENSION OF RULES IN REGULAR SESSION—Continued

Mississippi	Usually fixed by resolution about five days from the end of the session.
Missouri	Sixtieth legislative day by constitution.[1]
Montana	Within first thirty-five days of session.[2]
Nebraska	Within first twenty days of the session.
Nevada	None.
New Hampshire	After the third Tuesday of the session.
New Jersey	First six weeks of the session.
New Mexico	First forty-five days.[2]
New York	Fixed by resolution. (1948-Feb. 25).
North Carolina	None.
North Dakota	Limited by rule to first thirty-five days except by a 2/3 vote.[2]
Ohio	After second Monday in February except appropriation bills.
Oklahoma	None.
Oregon	Usually fixed by resolution—date varies. (1947—First 25 days in the House except appropriation bills; first 35 days in the Senate except committee bills.)[2]
Pennsylvania	House usually fixes time limit except for revenue measures. Senate does not usually fix limit.
Rhode Island	Forty-second day of session.[1]
South Carolina	None.
South Dakota	Fixed by resolution, date varies.
Tennessee	Last two days of session.
Texas	Within first thirty days of session.[1]
Utah	First forty days.[2]
Vermont	By rule, second Tuesday in February.
Virginia	None. (Usually fixed by resolution).
Washington	By constitution, introductions prohibited during last ten days of the session.[2]
West Virginia	*Within first fifty days of session.*[2]
Wisconsin	By rule, limited to first five weeks except by two-thirds vote.
Wyoming	By rule, twenty-five days in House, thirty-five days in Senate. Rule is usually modified each session. (1947—Senate, 19 days; House, 20 days.)[2]

[1] Legislative days. [2] Calendar days.

CHAPTER 14
READINGS

¶ 143. Definition and Purpose

It is obviously both the right and the duty of a deliberative assembly to be fully informed of the nature of each matter which is brought before it for its consideration and disposal. Discussion, debate and hearings are all for the purpose of clarifying propositions, facilitating the formation of opinions and final judgments; but as each matter is presented to the assembly so that action may be taken upon it, whether intermediate or final action be involved, the members must know clearly what it is that they are advancing, killing or passing, or the entire procedure must be a farce. The right and the duty of the members is that they know what they are doing, and the *reading* of the proposition is one of the means by which this is accomplished. To know what they are doing is certainly a fundamental and absolute right and duty; yet reading as a means to this end, as well as the number of times the reading must take place, is not always an absolute right; and where it is a right, it is derived from various sources, including the constitution, and the rules of the assembly. Some of these sources may be waived, as will be explained in ¶ 150.

¶ 144. Kinds of Readings

The reading of a paper or proposition does not necessarily mean reading every word of it. At one place or time, it may mean reading in full by sections. At another, it may mean that only the title is to be read, and at other times, just the number of the bill or resolution is sufficient to identify it and satisfy the requirement that it be "read" on that particular occasion. In Colorado, it has been held that reading in the committee of the whole, if that fact is entered in the journal, is effective compliance with the reading requirement.[1] Readings in other committees, however, do not have this effect anywhere. The number of propositions before a modern legislature is usually such that readings are often accomplished at such high speed that it would be difficult to understand them, even if any member should try. In such cases, however, it must not be supposed that the neces-

[1] In re Reading of Bills, 9 Colo. 641, 21 Pac. 477.

sity for informing the house of the subject of action is defeated. The members are aware of what is being read by information placed upon their desks, perhaps in the form of printed calendars or orders of the day. The rapid reading by the clerk and the apparent inattention of the members, or even the entire absence of actual reading, must seem to the public in the galleries as a travesty of democratic procedure. But the members may know, for instance, that this is the unanimous consent calendar, the bills upon which they have had ample time to examine, at least cursorily, if they wish to make an objection or engage in debate. The readings in such cases are, at worst, formal surplusage, a continuation of procedure initiated in a more leisurely century with fewer and less complex problems.

¶ 145. Number of Readings

The general rule is that before a bill can become law there must be three separate readings in each house, some, as stated above, by title, some in full, some by number only. Moreover, the terms, first, second and third readings, have a significance apart from the actual number of times the bill is in fact read. Thus, a bill may be read in committee, by members individually by and to themselves, in caucuses, or under any circumstances whatsoever. But to satisfy the rule for three readings, a specified officer of the assembly must perform the task in a manner satisfying the rules, to a quorum. Moreover, the terms have such technical meanings that they may mean the *position* of the bill before the legislature, so that one kind of action may be taken upon it and not another, as will be explained later. Thus a bill, having been officially read twice, may be reconsidered and *returned to second reading,* for further action which it is only proper to take at the time of its second reading (see Chap. 16 and ¶ 146).

¶ 146. Application to Various Papers

The propositions read to an assembly include motions, amendments, bills and resolutions. Constitutions most frequently provide for three readings of bills and resolutions, and the meaning of the word "reading" is something slightly different for these than the reading of motions, amendments and other matters. It is the fundamental right of the whole membership, or a definite percentage of it, to have read to them matters on which they are to vote. The same right does not exist concerning the reading of the informative papers, and such reading is by consent of the house. Motions and amendments are to be clearly

read when they are put by the chair, but they are not subject to the rules of multiple readings on different days which apply to bills and resolutions.

¶ 147. First Reading

There is considerable difference of practice as to the action preceding and following first reading. The rule followed by the majority of states as to first reading may be stated thus: The bill is read by title only immediately after it has been numbered by the clerk and before it is referred to the committee. Rule 41 of the Wisconsin Senate is characteristic and typical and reads as follows:

> "On the first reading, every bill or memorial requiring three readings shall be referred to the appropriate committee, which shall be announced by the presiding officer, unless the senate, on motion, make a different order in relation thereto; and this rule shall apply as well to bills, resolutions and memorials originating in either house."

Any final action at this time is very unusual, but the question is sometimes put whether the bill shall be read a second time or referred to a committee, and there is then an opportunity, in states in which this rule obtains, to kill it at once by refusing to have it read a second time or referred. In some states bills are not read a first time until they are reported out of committee.

¶ 148. Second Reading

Quoting again from the Wisconsin Senate Rules:

> "The second reading shall be had before the bill or resolution is amended or ordered read a third time. Each bill or resolution ordered engrossed and read a third time shall be under the direction of the engrossing clerk, carefully typewritten, with all amendments adopted to the original bill reduced into the text, placed in a new envelope, upon which the endorsements on the original envelope shall be carefully engrossed, and, with the original, shall be delivered to the chief clerk, who shall record it correctly engrossed in the journal and place it upon the next calendar 'ready for third reading.' The original shall then be filed by the chief clerk and the engrossed copy shall thereafter be the original. If it shall be subsequently found, however, that mistake has been made in engrossing the chief clerk shall have the power under rule 32 to correct such error in engrossing. A bill or resolution which shall be 'ordered engrossed and read a third time' without any amendment thereto having been adopted shall

> not be engrossed, but shall be placed upon the next calendar 'ready for third reading'; and when a bill or resolution which shall have been amended only by a substitute adopted without amendment shall be 'ordered engrossed and read a third time' the original substitute in an engrossed envelope shall be the engrossed bill or resolution."

The prevailing procedure requires that a bill be read a second time in full or by sections, though in some reading by title is sufficient. It regularly takes place when the bill is reported out of committee. A few states provide for first and second readings upon introduction and before committee reference. *The status of second reading, if following report by committee, is the most important part of the life of the bill on the floor,* and its advancement to third reading forecasts its probable passage. It is during this period that the whole house now has the opportunity to discuss, debate, amend, and even prematurely kill it. First reading is perfunctory, third reading simultaneous with final passage or defeat (except in New York); but second reading is the construction or destruction period for important or controversial measures, either on the floor or in committee of the whole. The termination of this period occurs upon a vote on the question, "Shall the bill be engrossed and ordered to have a third reading?" A bill upon second reading status is in the critical state. When it passes to third reading, if a further amendment is desired, it is customary, as stated above (¶ 145), to return it to the status of second reading for that purpose.

¶ 149. Third Reading

The prevailing rule among the states is that the third reading, in the absence of suspension of the rules, is in full or by sections, and that immediately after the third reading the question of final passage is put. The bill is then passed or defeated at the same session. In New York alone third reading may take place a day before its final passage.

¶ 150. Dispensing with Readings

The constitutions, statutes and rules provide how and under what circumstances readings may be dispensed with, modified or performed on the same day. All members feeling fully conversant with the nature of the measure presented for their consideration, may move or agree to suspend a rule to read in full so that it is read by title only; or more than one reading may be had at once to expedite passage. Such suspensions are some-

times confined to measures declared to be emergencies, and the emergency clause may have to be adopted by a separate vote (see ¶ 198). It is sometimes provided that the rule to read in full on third reading and final passage may not be suspended. If the constitution does not provide for the suspension of rules regarding readings, failure to read as required will cause an act to be invalid.[2] Not all states have the same view, however.[3] An ever important factor in determining the validity of bills not properly read is whether the provision is constitutional or statutory on the one hand, or is merely the result of rules made by the legislature itself, on the other. In the latter case, the violation of the legislature's own rules is not regarded as fatal.[4]

[2] *Smathers v. Madison County*, 125 N. C. 480, 34 S. E. 554.
[3] Miller v. State, 3 Ohio St. 475. Ritchie v. Richards, 14 Utah 345, 47 Pac. 670.
[4] Sweitzer v. Territory, 5 Okla. 297, 47 Pac. 1094.

RULES GOVERNING READINGS [1]

Symbols:

BR—Before reference to a committee.
AR—After the bill is reported out of a committee.
FP—On final passage.

State	Number		First Reading		Second Reading		Third Reading	
	Total	On same day[2]	How	When	How	When	How	When
Alabama	3	0	By title	BR	By title	AR	In full	FP
Arizona								
(House)	3	0	In full	BR	In full	BR	In full	FP
(Senate)	3	0	In full	BR	In full	AR	In full	FP
Arkansas	3	0	In full	BR	In full	[3]	In full	FP
California	3	0	By title	BR	By title	AR	By title	FP
Colorado	3	1, 2	By title	BR	In full	AR	In full	FP
Connecticut	3	0	By title	BR	[4]	AR	In full	FP
Delaware	3	1, 2	In full	BR	By title	BR	In full	FP
Florida	3	0	By title	BR	By secs.	AR	By secs.	FP
Georgia	3	0	By title	BR	By title	AR	In full[5]	FP
Idaho	3	0	By title	BR	By title	AR	By secs.	FP
Illinois	3	0	In full[7]	AR	In full[7]	AR[8]	In full[7]	FP
Indiana	3	0	By secs.	BR	By secs.	AR	By secs.	FP
Iowa								
(House)	2	1, 2	By title	BR	By title	FP		
(Senate)	3	1, 2	By title	BR	By title	BR	By title	FP
Kansas	3	0	By title	BR	By title	[9]	By secs.	FP
Kentucky	3	0	In full	BR	By title	AR	By title	FP
Louisiana	3	0	[6]	BR	[6]	AR	[6]	FP
Maine								
(House)	3	1, 2	In full[7]	AR	By title	AR	In full[7]	FP
(Senate)	2	1, 2[10]	In full	AR	In full	FP		
Maryland	3	0	By title	BR	By title	AR	By title	FP
Massachusetts[12]	3	0	By title	AR	By title	[11]	By title	[13]
Michigan	3	1, 2	By title	BR	By title	BR	In full	FP
Minnesota	3	0	By title[14]	BR	By title[14]	AR	By title[14]	FP

[Footnotes at end of table.]

State	Number Total	Number On same day[1]	First Reading How	First Reading When	Second Reading How	Second Reading When	Third Reading How	Third Reading When
Mississippi	3	0	By title	BR	By title	AR	In full	FP
Missouri	3	0	By title	BR	By title	BR	In full	FP
Montana[18]								
(House)	3	1, 2	By title	BR	By title	BR	By title	FP
(Senate)	3	1, 2	By title	BR	By number	AR	By title	FP
Nebraska	3	1, 2, 3	By title	BR	In full[19]	AR	In full	FP
Nevada								
(House)	3	0	By title	BR	By title	AR	By secs.	FP
(Senate)	3	1, 2, 3	By title	BR	By title	AR	By secs.	FP
New Hampshire	3	1, 2	By title	BR	By title	BR	In full	FP
New Jersey	3	0	By title	BR	By title	AR	By title	FP
New Mexico	3	1, 2	By title	BR	By title	BR	In full	FP
New York								
(Assembly)	3	0	[11]	BR	In full	AR	In full	FP
(Senate)	3	1, 2	[11]	BR	[18]	BR	In full	FP
North Carolina	3	0	By title	BR	By title	AR	By title	FP
North Dakota	2	0	By title	BR	In full	FP		
Ohio	3	0	By title	BR	By title	BR	By title	FP
Oklahoma	3	0[19]	By title	BR	By title	BR	By secs.	FP
Oregon	3	0	By title	BR	By title	BR	By secs.	FP
Pennsylvania	3	0	In full	AR	In full	AR	In full	FP
Rhode Island	2	0	By title	BR	In full[20]			
South Carolina	3	0	By title	BR	By secs.	AR	By title	FP
South Dakota	3	1, 2	By title	BR	By title	AR	By title	FP
Tennessee	3	0	By title	BR	By title	BR	In full	FP
Texas	3	0	By title	BR	By title	AR	By title	FP
Utah								
(House)	3	1, 2, 3	By title	BR	By title	AR	In full	FP
(Senate)	3	1, 2	By title	BR	In full	AR	By title	FP
Vermont	3	0	By title	BR	In full	AR	By title	FP

[Footnotes at end of table.]

RULES GOVERNING READINGS [1]—Continued

State	Number		First Reading		Second Reading		Third Reading	
	Total	On same day[3]	How	When	How	When	How	When
Virginia								
(House)	3	0	By title	BR	By title	AR	By title	FP
(Senate)	3	0	By title	AR	By title	AR	By title	FP
Washington								
(House)	3	0	By title	BR	By secs.	AR	In full	FP
(Senate)	3	1, 2	By title	BR	By title	BR	In full	FP
West Virginia ..	3	0	In full	AR	In full	AR	In full	FP
Wisconsin								
(Assembly) .	3	1, 2	By title	BR	By title	AR	By title	FP
(Senate)	3	0	By title	BR	By title	AR	By title	FP
Wyoming	3	0	By title	BR	By title[21]	AR	By title	FP

[1] This table shows the provisions of the rules or of the constitution. But under the rules and the constitutions, these provisions may usually be suspended by a two-thirds vote (in some states, in others, less). The reasons for suspension may be emergency or nothing more important than press of business. Sometimes the rules are not allowed to be suspended regarding reading in full on final passage, or with respect to appropriation measures or in other instances. Sometimes, though the rules in the constitution require reading in full, this is not actually done but the journal proclaims it to have been done, and the courts have held that they may not look beyond the journals to a fact in contradiction of them. In some states, this practice is more common than in others and has been indicated by this footnote reference, but this is not intended as a complete coverage of the states whose practice differs from the journal record.

The procedure in the House and Senate are the same except as otherwise indicated.

[2] Second reading is made "before a committee makes a report."

[3] This column indicates the numbers of the readings which may occur on the same day. A zero means that each reading must be on a separate day. 1, 2 means first and second reading may be on the same day; 1, 2, 3, means first, second and third.

[4] Second reading is the committee report.

[5] By rule, first and second reading of local bills, bank and railroad charters by title, otherwise in full. By practice, first, second and third reading of local bills by title, first and second readings of other bills by title, and third reading in full.

[6] Bills from the opposite house are only read once before committee reference.

[7] Reading in full is seldom done but may be compelled.

[8] Second reading on the day after introduction and after reference to committee.

[9] Bills must be read at least once in full. Which reading is not specified.

[10] Grants of money or property and resolves must be read on separate days.

[11] The day after committee report.

[12] Before engrossment.

[13] Readings in Massachusetts indicate only the position of the bill, as actual readings are always dispensed with unless there is an objection and objections are not made.

[14] The constitution requires that bills be read at least twice in full. In practice, this is never done. See footnote 1.

[15] Appropriation bills must be read in full at second and third readings.

[16] Except in controversial matters, which may be by title.

[17] Bills are deemed to have had their first reading when they are introduced.

[18] Second reading in the senate is by bill number only.

[19] First reading in the second house may take place the same day as the final reading in the first house.

[20] Second reading is the committee report which is read in full.

[21] Entire bill read in committee of the whole.

CHAPTER 15

INTRODUCTION AND ACTION PRIOR TO SECOND READING

¶ 151. Order of Business

The rules in each house of the various legislatures provide for a specified order of business except on days and at times set apart for the consideration of special orders. A typical order of business is as follows:

1. Roll call
2. Prayer by chaplain
3. Reading and approval of the journal of the preceding day
4. Introduction and first reading of bills and resolutions
5. *Unfinished business*
6. Presentation of petitions
7. Reports of standing committees
8. Reports of special committees
9. Consideration of bills on second reading
10. Consideration of bills on third reading
11. Motions and miscellaneous business
12. Announcements

¶ 152. Legislative Assistance Services

Legislators are not necessarily, and perhaps not usually, informed in the necessities for the preparation of an adequate law. Many a layman is no doubt under the impression that in order to levy a tax, correct an evil, or establish justice, it is only necessary to sit down and write something in the nature of an order to police officials preceded by an enacting clause. They often do not know, and do not know how to find out, whether there is a previously existing law which adequately or inadequately covers the subject and with which their bill would be in partial conflict.

Then there are formal clauses to be considered, constitutionality, and, of course, grammar, spelling and punctuation.

Many states provide for this situation by charging a committee, bureau, or official with the duty of providing sources of reference and many of translating the proposal of the legislator into the legal document which will give effect to his intentions, if enacted, in proper and adequate form. In New York State, for instance, the committee on revision in each house examines and corrects bills referred to it for the purposes of avoiding repetition, insuring accuracy in the text and references, and providing consistency with the language of existing statutes, and in Wisconsin a bill is still unintroduced until it has been referred to a revision committee, whose duty it is to examine it and correct it as to form, designating laws to be amended and repealed and making other adjustments not of a substantive nature. Formal introduction takes place after this committee has done its work. Idaho, Minnesota, Nevada, Utah and West Virginia seem not to have the fullest officially established facilities for this type of assistance to the legislators, and the attorney general or private counsel are often called upon for that purpose.

¶ 153. Organization and Action Prior to Introduction

Before any considerable number of bills is introduced and usually before any bills are introduced at all, the legislature organizes, and appoints officials and standing committees for each house. It also listens to an address by the governor recommending legislation and commenting on the condition of the state. There is sometimes an address by the outgoing governor whose term overlaps the commencement of the regular session and later, an address by the incoming governor. It is not the custom of the outgoing governor to make legislative recommendations, however, but only to summarize the progress and problems under his administration.

¶ 154. Introduction

Introduction actually takes place when, in compliance with the rules of the legislative body, a member of the legislature presents a draft of the measure which he desires to propose, to the clerk or other designated official, or places it in a box often referred to as the "hopper" provided for that purpose. As an example of procedure on introduction, Maryland Senate Rule 21 provides that on introduction there shall be presented by the senator introducing the same, one original and two copies of said bill, one of which is retained by the Secretary of the Senate for the files. The original, durably backed and securely fastened,

goes to the printer. The other copy is for use of the press. And in addition to this, three titles are to be submitted, printed or typewritten on legal sized typewriting paper, two copies of the title to be attached by removable clips to the backing of the original copy of the bill. One of the copies of the title is for the use of the journal clerk and one for the Bureau of Legislative Reference.

¶ 155. Time Limit for Introduction

The prevailing rule is that introductions may continue until stopped by a resolution. In some states no such resolution is ever adopted. Introductions then may occur up to the last hour of the legislative session. Another school of thought reasons that no measure can receive serious consideration if introduced late in the session, and so forbids introductions during the last days or after a certain day, counting from the beginning of the session. Still another provides an early period almost exclusively for introduction followed by a period of consideration and action. Colorado, Connecticut, California, and Massachusetts all have a preliminary introduction period. West Virginia repealed a similar provision. A table will be found at the end of chapter 13 listing the restrictions on the period during which bills may be introduced at regular sessions.

¶ 156. Abuse and Nullification of Divided Session System

Theoretically this system of divided sessions has much merit. It was, no doubt, felt that legislators have all the time between the adjournment of the preceding session or from the time of their election, up to the time limit for introduction of bills for drafting needed measures, and that the best opportunity for careful consideration is to draft and introduce first, and then be entirely free for the balance of the session to study and consider the measures already introduced. In fact, in California the legislature takes a recess for thirty days before even beginning committee action, during which time there should be ample opportunity for careful thought and examination on the part of individual members.

¶ 157. Skeleton Bills

In practice, however, the rule is too frequently circumvented (but not in Massachusetts) by introducing blank bills, with the result that in those cases the situation is much worse than if

there were no restriction whatever upon the time for introducing them. Under this procedure, Representative Jones may have been guilty of laches in failing to prepare an adequate bill on a subject which he has in mind, though he has been given ample time to do so. The dilatory qualities of human nature have resulted in his postponing preparation of the measure until too late to write it up. He, therefore, writes merely a vague title, followed perhaps by the enacting clause and the words "Section 1." The balance of the bill is entirely blank. This measure is numbered and referred to a committee.

Later on in the session, at his leisure and in complete disregard of the purpose and spirit of the rule limiting introductions (which had much better be repealed than violated), he prepares and submits to the committee the whole of the bill except its title. If accepted by the committee, it is reported out "by substitute" or "with amendment," the amendment in this case being the whole bill; therefore, the bill is already on its way through the legislature by the time its contents are known to the whole house or to the public which is to be affected by its passage.

¶ 158. Other Evils of the Skeleton Bill System

The foregoing hypothetical case is by no means the most objectionable of the possible circumstances in which the power to introduce by a mere title is used. Many legislators, desiring to be free from the necessity of asking consent and risking possible refusal to suspend the rules for introduction, may prepare titles on numerous subjects merely to protect themselves against the possibility of a need to introduce bills on such subjects after the time limit for introduction has expired. Of course, a committee may fail to report out such measure, but in that case such measure is in no different situation than a bill duly introduced in full during the time limit. It may very well be, therefore, that a legislator has no idea whatever what kind of a bill he intends to append to a given title or whether he ever intends to do so; but if he conceives the need for it, even on the last day of the session, and can get his colleagues in committee to agree, he may furnish a body to any one of his titles. The committee may report the bill, and the house may rush it through in all the worst tradition of states which have no time limit for introduction, with, however, the added disadvantage that no one has had an opportunity to examine, study or criticize before the bill is already out of committee.

¶ 159. Doubt as to Validity of Skeleton Bills in California

Under date of January 18, 1937, the deputy legislative counsel of California, Sidney L. Weinstock, in response to a request of the President of the Senate, submitted an opinion, in effect, that a skeleton bill cannot become law, no matter how subsequently amended. The assistant counsel's opinion said among other things:

"You have asked us whether a bill which contains only a title and an enacting clause, and which does not set forth any of the law which it purports to propose, is in fact a bill.

"In your letter requesting this opinion, you illustrate the general form of a skeleton bill as follows:

"'An act to amend section . of . , relating to .

The people of the State of California do enact as follows:

SECTION 1. . . . . .'

"We have made a careful investigation of the reported cases and have failed to find a case which even discusses this type of skeleton bill.

"However, in this research we have found several authorities defining the word 'bill.' We believe these authorities indicate that the model skeleton bill illustrated above is not a 'bill.'

"Section 15 of Article IV provides in part: 'No law shall be passed except by bill. * * *'

"The use of the word 'bill' in this sentence certainly contemplates that a bill is something which may be enacted into law. This is further evidenced by a consideration of some of the provisions of section 2 of Article IV:

"'The sessions of the Legislature shall be biennial, * * * and shall continue for a period not exceeding 30 days thereafter; whereupon a recess of both houses must be taken for not less than 30 days. On the reassembling of the Legislature no bill shall be introduced in either house without the consent of three-fourths of the members thereof, nor shall more than two bills be introduced by any one member after such reassembling.'

"A provision such as this should be considered with reference to the evil to be remedied (*Hilborn v. Nye,* (1911) 15 Cal. App. 298). Cooley in his work on Constitutional Limitations, Eighth Edition, at page 286, discusses similar provisions as follows:

"'The Constitution of Michigan provides that no new bill shall be introduced into either house of the Legislature

after the first 50 days of the session shall have expired; and the Constitution of Maryland provides that no bill shall originate in either house within the last ten days of the session. The purpose of these clauses is to prevent hasty and improvident legislation, and to compel, so far as any previous law can accomplish that result, the careful examination of proposed laws * * *.'

"Under constitutional provisions such as those cited by Cooley, there is one object to be attained which would be thwarted by the use of skeleton bills. Under the California system, this object is of course thwarted by the use of skeleton bills, but still another object is thwarted.

"This object is well summarized by Thomas S. Barclay of Stanford University writing for the California Law Review. At page 45 of Volume 29 (1931-1932) he says:

" 'In the first place, it may be regarded as a means of improving legislative procedure and the conduct of legislative business as provision was made for the introduction of bills during the first portion of the session, their consideration during the recess, and their passage during the final weeks. Secondly, it may be regarded as furnishing desirable publicity, because the general public, as well as the legislators, would be given an opportunity to study the bills that had been introduced and readily to discover 'bad' bills and 'good' bills. Thirdly, the interval between sessions would also furnish to constituents an opportunity to make known to their representatives their opinions and wishes with reference to proposed legislation. Thus, desirable legislation could be more easily enacted and undesirable legislation defeated, according to the dictates of the people of the State acting as a sort of super-lobby. Finally, the restrictions upon the introduction of bills after the recess would effectively prevent the passage of hasty and ill-considered measures during the closing days and hours of the session. The plan, considered in the abstract, lays claim to many virtues.'

"Obviously the people can not study or distinguish between 'good' or 'bad' skeleton bills. It seems to follow inescapably that the word 'bill', in view of the foregoing discussion, can not include a skeleton bill.

"Prior to the adoption of the amendment to section 2 of Article IV the 'skeleton bill' was not used in this state. Barclay, 20 Cal. Law Rev., p. 49, says:

" 'The skeleton bill practice, which violates the theory of the bifurcated session and which destroys its possible effectiveness, seems to have developed about 1919-1921 * * *.'

"On page 50 he continues:

"'During the second part of the session the skeleton and partial skeleton bills are filled out. It is obvious that this practice nullifies one of the basic ideas of the divided session. The evil reached alarming proportions in the sessions of 1923 and of 1925 when 303 and 304 such bills, respectively, were introduced. In his inaugural address, Governor Young, who had long legislative experience and was thoroughly familiar with the situation, criticized the practice and indirectly stated that such bills, if passed by the Legislature, would be very critically examined by him. Indeed, the impression was general that the great majority of skeleton bills faced certain veto. The result was a sharp decrease in this type of proposed legislation both in the 1927 and in the 1929 sessions of the Legislature. In the former there were only 54 in the Assembly and 27 in the Senate, a total of 81; in the latter a total in both houses of 55, including 37 in the Assembly and 18 in the Senate.'

"Summarizing our opinion, we find that in ordinary usage, a bill is a draft which may become a law. This meaning was attached to the word when our Constitution was adopted and it prevailed when section 2 of Article IV was amended in 1911. To attribute any other meaning to the word would be to defeat the very objects the Legislature had in mind in proposing this amendment, and as Cooley says, the people must have understood when it was adopted."

Pursuant to this opinion, the President of the Senate declared he would order skeleton bills stricken from the files. The legislative counsel held, however, that the presiding officer of each house must accept, as properly introduced, measures certified by the other presiding officer (Answer to request No. 7756. Senate Journal April 8, 1937). The courts have held that one may not inquire back of enrollment to challenge the validity of a law (see chapter 19). It would seem therefore that correction of the evil is up to the presiding officers of the legislative houses in the states where this practice prevails.

¶ 160. Skeleton Bill Validity in Other States

Legislators in other similar jurisdictions often operate under the fear that there will be a like ruling affecting their own measures, and it is, therefore, not uncommon for them to endeavor to conceal the blank condition of the bill, and any legitimate request for its examination may meet with mystery and evasion.

It is obvious that either the time limit rule is not just, or is inadequate to meet the needs and conditions of legislative bodies,

in which case it should be repealed; or, it is a satisfactory and progressive means of promoting careful consideration, in which case it should not be evaded. Permission to introduce bills after the time limit is always provided by consent of the house concerned, *whether it be a majority, two-thirds or unanimous consent*, and this ought to take care of all special cases. As practiced at present, it is scarcely debatable that bills introduced by title only result in an evasion and an evil.

¶ 161. Duplicate Introductions

It is customary in some states, and happens occasionally in others, that the identical bill will be introduced simultaneously in the two houses. The purpose is to increase the chances of passage, and to expedite consideration. If a bill in one house is already advanced when its duplicate is received from the other, the bill which has passed will be substituted for the bill which has not yet passed. The states where these measures are the rule rather than the exception are New York, Minnesota, Connecticut (usually in years when both houses have the same politics). Many other states also follow the practice to a greater or lesser extent. Florida House Rule 44 indicates the accepted procedure in states where duplicate measures are pending upon the same calendar, one of the House, the other of the Senate. Here they are called "companion bills." (This is the usual term for duplicates, though it is more properly applied to a bill which supplements another, as where one provides for an amendment to the constitution to permit an income tax, and another, to impose the tax if and when the constitutional amendment is adopted.)

> "Companion bills. Whenever any bill, memorial or joint resolution of the House of Representatives shall be reached on the calendar for consideration, either on second or third reading, and there shall also be pending . . . a companion measure to such house bill . . . which companion measure has already been passed by the Senate, it shall be in order to move that the Senate companion measure be subsituted for the House bill . . . and considered in lieu thereof, and such motion may be adopted by a majority vote to substitute such Senate measure for such House bill, provided the Senate measure has been read the same number of times and is on the same reading as such House bill . . . otherwise the motion shall be to waive the rules and take up and read such Senate measure in lieu of the House bill . . . and such motion to waive the rules for that purpose shall require a two-thirds vote of those present for its adoption."

¶ 162. Public and Private Bills

Bills may be classified into (1) public and (2) private and local. In the former class are bills of general application throughout the state wherever persons, things or businesses etc., of a certain class, covered by the bill, may be found. Thus, a tax on beauty parlors would be a public act, to regulate the industry wherever located in the state, and/or to raise revenue for the support of the government. Private measures are those which affect one person, or one locality. A bill granting a sum of money to a man for damages suffered, for which the state is not answerable in court, is a sample of a private bill. A local measure is one which is restricted in its application to one locality and is not of state-wide application. Under the system in Georgia, North Carolina, Maryland and Tennessee, local legislation, by counties, is quite common, and bills which in other states always have state-wide application or else are enacted solely by the governing bodies of the localities affected are, in these states, enacted by the state legislature for individual counties.

¶ 163. Budget Bill

Section 70 of Article IV of the Alabama constitution provides in part that the governor, auditor and attorney general shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature for its information, and the secretary of state shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared which the governor shall transmit to the House of Representatives as soon as it is organized to be used or dealt with as that House may elect. The Senate may propose amendments to a revenue bill. No revenue bill shall be passed during the last five days of the session.

Similar provisions requiring the governor to submit a budget, or give information on which it can be based, appear in the constitutions of other states. Colorado only requires that at the commencement of each session he shall present estimates of the amount of money required to be raised by taxation for all purposes of the state.[1] Florida requires that the departments must report their needs and expenditures to the governor who shall lay them before the legislature.[2] Idaho has a similar provision.[3] In Illinois, the governor must account to the general assembly

[1] Colorado Constitution, Article IV, Sec. 8.

[2] Florida Constitution, Article IV, Sec. 27.

[3] Idaho Constitution, Article IV, Sec. 8.

and accompany his message with a statement of all moneys received and paid out by him, and at the commencement of each regular session present estimates of the amount of money required to be raised by taxation for all purposes.[4] In Massachusetts, the budget must be recommended by the governor within three weeks after the convening of the general court.[5] In Missouri, the governor must submit his budget within fifteen days after the convening of the general assembly in each biennial session. In Montana, the requirement is only that the governor must present estimates of the amount of money required to be raised by taxation for all purposes of the state.[6] Nebraska requires the governor, at the commencement of each regular session, to present by message a completely itemized budget for the ensuing biennium "prepared with such expert assistance and under such regulations as may be provided by law."[7] In New York, on or before the fifteenth day of January next succeeding (except in the case of a newly elected governor and then on or before the first day of February), the governor must submit a budget containing a complete plan of proposed expenditures and estimated revenue.[8] The governor of Texas, at the commencement of each regular session, must present estimates of the amount of money required to be raised by taxation.[9]

West Virginia has an elaborate budget procedure, and every appropriation bill is either a budget bill or a supplementary appropriation bill. Within ten days after the convening of the legislature, unless such time is extended by the legislature for the session at which the budget is to be submitted, the Board of Public Works consisting of the governor, the secretary of state, the auditor, the treasurer, the attorney general, the superintendent of free schools, and the commission of agriculture, submits two budgets, one for each of the ensuing fiscal years.[10] Where the budgets are submitted by the governor, they pass the legislature and become law without his signature.

¶ 164. Budget Bill—California and Maryland

California, being a budget state, has provided for regular sessions to meet in the even numbered years for the purpose of considering the budget primarily.

[4] Illinois Constitution, Article V, Sec. 7.
[5] Massachusetts Constitution, Article LXIII, Sec. 2, amendment.
[6] Montana Constitution, Article VIII, Sec. 10.
[7] Nebraska Constitution, Article IV, Sec. 7.
[8] New York Constitution, Article IV-a, Sec. 2.
[9] Texas Constitution, Article IV, Sec. 9.
[10] West Virginia Constitution, Article VI, Sec. 51.

Maryland has a similar provision up for consideration of the voters in the Fall election, 1948. The California amendment, in effect in 1948 for the first time, provides that the governor shall, at each regular session of the legislature, submit with an explanatory message a budget containing a complete plan and itemized statement of all proposed expenditures of the state for the ensuing fiscal year, together with a comparison with the actual revenues and expenditures of the last completed fiscal year and the actual and estimated expenditures for the existing fiscal year. If the proposed expenditures exceed the estimated revenues for the ensuing fiscal year, the governor must recommend sources from which additional revenue may be provided. The governor submits this budget within the first thirty days of each general session, that is, the session meeting in the odd numbered year, and within the first three days of each budget session, meeting in the even numbered year.

In Maryland, the budget session, if adopted, will meet on the first Wednesday in February in every even year for a thirty-day session. The governor must submit his budget in the odd numbered year within twenty days after the general assembly convenes, except in the case of a newly elected governor, and then within thirty days after inauguration. In the even numbered year, the governor must submit his budget on the first day of the session. There are similar provisions regarding the contents of the budget message, and the governor must also, at the same time, submit a bill for all the proposed appropriations of the budget. If the legislature does not act upon the budget bill three days before expiration of that regular session, the governor may extend the session, and during such extension, no other matter than such budget bill may be considered, except provision for the cost of the session.

There are states other than those enumerated which provide statutory requirements for the submission of budget bills, but the foregoing covers the states in which there are constitutional provisions.

¶ 165. Revenue and Appropriation Bills

By constitutional provisions, in twenty-one states and Congress, bills levying taxes arise in the lower house, though the senate may amend, increase, reduce or strike out taxes. Appro-

priation bills usually arise in the lower house by custom rather than rule. Some states have what is called a general appropriation bill. These bills are intended to include all ordinary expenditures, but there are usually many other appropriation bills for miscellaneous, collateral and special expenses. The "ordinary" expenses are those which have to do with the general operation of the government.

¶ 166. Numbering—Printing

Before reference to a committee, all bills are numbered. This was not always true everywhere. Until recently, bills of the House in Virginia and Maine were not numbered until they had been reported out of committee. This inconvenient system was changed in Maine at the suggestion of the author, and Virginia followed a few years later. Resolutions are still unnumbered in New York, while in North Dakota and Michigan they are lettered. In New York, Pennsylvania, South Carolina and Maine the same bill may bear more than one number: the number assigned on introduction (called "introductory" number in New York and "paper" number in Maine); the number or numbers assigned each time printed or reprinted (called "printer's" number in New York and Pennsylvania, and "document" number in Maine); and the number assigned on reaching the second house in Pennsylvania and South Carolina.

These numbers conflict with each other so that, to be distinguished, they must be preceded by their nominal designation. Thus, New York Assembly Introductory Number 500, New York Assembly Printer's Number 500, Maine House Paper Number 500 and Maine House Document Number 500 may be two, three or four distinct measures. Higher reprint numbers, of course, indicate later amended or revised versions of the bill. There may be many print numbers on a New York bill, but each time it is reprinted the bill bears all the preceding numbers including, of course, the unchanging introductory number.

In Pennsylvania and South Carolina, all bills receive a new number when they reach the second house, still retaining, in addition, the number of the house of introduction. In South Carolina, a bill may have as many as four numbers: the introductory number in the first house; the number assigned to it in the second house; and a different printer's number in each house. The calendar number is printed in bold face type at the top of the bill, but this number is always the same as the introductory

number of the house in which it is printed. If a bill is reported in the second house after a committee report, it bears the introductory number of the first house as well as the second. Otherwise, the number of the first house does not appear. Thus, when House Bill 770 of 1947 was first introduced and printed, the words "Calendar No. 770" appeared in bold face type in the upper right-hand corner. Below that, in the left-hand corner, was "Printer's No. 642," and below that was printed "H. B. No. 770." When the bill reached the Senate, it was assigned Senate No. 692 which was printed on the bill only as "Calendar No. 692," and the printer's number was 572. Below this number was printed "H. B. No. —," the number of the house of introduction being thus left blank. In Pennsylvania, "serial" numbers are first assigned to all resolutions. If they are printed, they also receive a "resolution" number and a "printer's" number. Not all resolutions are printed, so some of them have only serial numbers.

In New Jersey, reprints are not given new numbers, but are designated "Official Copy Reprint", "Second Official Copy Reprint", "Third Official Copy Reprint", etc. When bills are reported from committee they are reprinted automatically even though unamended. This is the "Official Copy Reprint." Thereafter reprints are made as amendments require.

In New York there is a third classification number called "reception number" which is given to the bill upon receipt in the second house. It is printed only on bills which are amended in the second house. In some states bills must be printed before they can be considered.

In Congress, bills are printed in the following instances: (a) when introduced, (b) when reported out in the first house, (c) when referred to committee in the second house, (d) when reported out of committee in the second house, (e) when conference report is submitted, and (f) when the bill becomes law. Throughout this procedure, the bills carry the same number—the number assigned on introduction; but in addition to this, there will be a calendar number when the bill is placed on a calendar. Calendar numbers designate the order in which bills are received and placed on the proper calendar. A bill is not reprinted if passed without an amendment in the second house or if passed with a floor or committee amendment agreed to in the second house. A bill of major importance containing numerous amendments, such as an appropriation bill, is usually reprinted.

Contrary to the general practice in the states, it is customary for Congressional Committees to submit and print full reports giving reasons for the decisions they have reached. These reports also receive separate numbers of their own. Document numbers in Congress are assigned numerically as material is received by the House or Senate and deemed of sufficient importance to have it printed for public distribution. The Government Printing Office assigns all document numbers. Such numbers are assigned mainly to departmental material messaged to Congress and ordered printed.

In the U. S. Senate, there is an unwritten rule that any member may offer and have printed his amendment to a pending bill. In the House, unanimous consent is required to print such amendments. In South Carolina, amendments are often printed on the bills which they amend. In Wisconsin, amendments are printed separately. Elsewhere, amendments usually appear in printed journals where the states publish them.

¶ 167. Committee Reference

The clerk or the presiding officer now designates the committee to which each bill is to be referred. In Maine, Ohio and Utah, bills are referred by a committee appointed for that purpose. In the Ohio Senate, the author refers bills directly to a standing committee on the day following their introduction, unless objection is raised from the floor, which is seldom done. When the bill is referred by the author, it is called "second reading" although it is read by title only. In the Ohio House of Representatives, bills are automatically referred to the House Reference Committee after a first reading by title. Under the House rules, this committee must act on the bill within eight legislative days. This committee also determines whether or not the bill is to be printed. In the Senate, bills are printed immediately upon introduction. In some states, a bill first goes to a committee on printing and when it has discharged its duty, the bill is then sent to another committee for consideration on its merits. In Arizona, bills are referred to several committees including the Judicial Committee in the House which checks the bill as to constitutionality, legal form and phraseology. In the Senate, bills may also be referred to more than one committee at a time, but not necessarily the Judicial. Committee reference is sometimes waived in order to expedite the progress of a bill, including reference to the Judicial Committee in the House.

Committee reference is sometimes waived in order to expedite the progress of a bill, more especially near the close of the session. This is accomplished by a vote of the house suspending the rules. But if a bill must be referred to a committee under the constitution there can of course be no waiving of this provision or suspension of rules.[11] Committees are joint in Maine and Massachusetts (see Chapters 20 and 21) and usually in Connecticut, though the practice varies, usually depending upon whether both houses have the same political majorities.

¶ 168. Power and Nature of Committee Action

Theoretically, at least, committees have only advisory power to the house at large. They examine bills, consider the necessity for immediate legislation and whether or not changes or amendments should be made in a given measure before a final vote. However, the committee is the principal instrument of the house for adequate consideration of measures and its recommendations carry great weight. In most states, committees are not required to report on all bills before them within any specified time. Therefore, by failure to report a bill from committee, either recommending its passage or defeat and thus preventing its reaching the calendar, its death may be effected as surely as if it had come up for vote and had received an insufficient number of yeas. By motion or resolution, however, a committee may be discharged from consideration of a bill and thus be required to bring it out on the floor.

One state provides, for instance, that after a bill has been only five days in committee such a motion is in order. The motion is usually hedged with restrictions to prevent too frequent use; this is especially true in Congress. Discharge of a committee is sometimes merely a formality in order to amend from the floor and recommit. This is frequently done in New York. Other states require all bills to be reported out of committee before a definite time. It is not alone, however, by retaining the bill in committee that the committee's influence is felt. An unfavorable report usually places the bill in an unsatisfactory position before the house for passage. Thus, it may go on an "adverse calendar" from which bills are not to be taken for consideration except on motion; or the bill may be automatically tabled, requiring a motion to take from the table; and, in general, measures in such a position are usually not reached for considera-

[11] Walker v. Montgomery. 139 Ala. 168. 36 So. 123.

tion by the house as a whole until some special affirmative action has been taken to change their status.

¶ 169. Hearings

Committees may hold hearings on bills referred to them for the purpose of obtaining the points of view of interested persons. This means that an opportunity is given to interested parties to come to the committee room at a certain designated time, prepared to stand before the committee and present arguments for or against a given measure. In some states, the time and place of the hearing are arranged by approaching the chairman and making a request for such a hearing; in others, a time and place are fixed automatically, without a request. In the former states, when hearings are arranged on request, only those making the request or especially invited know of the hearing, and the general public is seldom informed.

It is not that these hearings are secret, but it is assumed that those who are interested will inquire, or if such hearings are of general public interest, that notice will appear in the press. That the press rarely does so is not alone due to the fact that many a bill is of small general interest, though of great interest to a particular group, but also to the fact that the time for the hearing may be so soon after the fact is made known, that it is too late to be of value to anyone desiring to attend. Thus, in Congress, hearings are posted the day before they take place. It is submitted that if anyone has expressed sufficient interest to be heard, one way to help all sides to present their case is to give ample publicity to every such scheduled opportunity to present views. The frequency of hearings differs widely among the several states as does also the publicity given to the dates when such hearings are to be held. Thus, in Rhode Island, hearings are the exception, and when they are to be held there is no means of ascertaining their scheduled date other than by making inquiry of the chairman or the clerk of the committee or other person who might happen to know.

At the other end of the scale, Massachusetts, Maine and Wisconsin post notices of dates and hours well in advance when hearings are to be held on virtually every bill introduced. In New York and Rhode Island, most of the hearings which take place are the result of a request made by interested parties; in Massachusetts, Maine and Wisconsin no requests are made or are necessary, because hearing dates are assigned automatically.

The primary object of the hearing, of course, is to give the committeemen information and views pertaining to the bill under consideration, to enable them to make their recommendations with such knowledge and argument as are available at such hearings.

A secondary object is to enable the committeemen to determine the strength of the protagonists and antagonists, or public indifference. A legislator is not likely to oppose a measure strongly supported by his constituents, nor favor one fought by those who obviously speak for a large or important group of them.

¶ 170. Amendments

Amendments may be made or proposed by the committees as explained above. If these are adopted, the bill is before the house in that form. Whether a bill is reported out in the same form in which it was introduced or with an amendment, when it is reached for consideration, it is in order to propose amendments from the floor. When the amendments thus proposed are extensive or voluminous and are of such a nature that they may be separated conveniently into different parts which are not interdependent, it is in order to move that the proposal to amend be divided into separate parts so that each may be considered on its own merits.

When this motion is made, it should specifically state the manner in which it is proposed to cut up the amendments for consideration. This procedure is called "division of the question." The question is not divided as a matter of right but as merely another proposition to be made and adopted or rejected, in the absence of a rule to the contrary. Not all proposed amendments are of a nature which is susceptible to convenient division of this kind, and the presiding officer may decide whether this can be conveniently accomplished, in case the question is raised.

¶ 171. Blanks

Bills are sometimes introduced with certain items left blank so that these may be considered and discussed by the committee or on the floor. The blanks are filled in in the same manner as amendments are made. The rules generally provide that where there are several propositions for filling in blanks, the largest in amount, the longest in time, or the greatest in number are the questions which are first put to the assembly, and as they are rejected, the amounts are reduced until an agreement is reached.

¶ 172. Amendments to Amendments

While an amendment is pending, it is in order to propose an amendment to the amendment. First, this may be done by the member who originally made the motion to amend. But it is too late to do so without the consent of the house if it has already been seconded and proposed by the chair. Therefore, if there is any objection, the mover may not change his amendment once it is before the assembly. The same is true of an amendment proposed by someone else and accepted by the mover. But an independent motion to amend an amendment is in order and may be voted on in the usual way. When an amendment to an amendment is pending, it is not in order to offer an amendment to this amendment. The object, of course, is to avoid the confusion which would tend to result from so many amendments. To accomplish the same result, the pending amendment must first be rejected and then reproposed in its new form.

¶ 173. Reconsideration of Rejected Amendment

When an amendment is rejected, it is not in order to propose a new one accomplishing substantially the same thing. For instance, if words are stricken out, it may not be moved to strike out the same words again; but a compromise or modified proposal would be in order which would partially strike out some of the matter proposed to be stricken by the rejected amendment.

¶ 174. Committee Recommendations

The most common recommendations of committees are as follows:

(1) Recommendation that the bill "do pass."

(2) That it "do not pass."

(3) That it "do pass as amended."

(4) That it be indefinitely postponed.

(5) That it be recommitted to another committee.

(6) Occasionally a report recommends that a bill "do not pass," but nevertheless the committee has amended it. This would mean that while they do not believe legislation is required, it is not in proper form in any event, and if considered, should be changed.

(7) Without recommendation. Sometimes this report is not permitted.

Although these recommendations of necessity carry much weight, the house is not bound by the action of the committee and may accept or reject the report; or if unsatisfied with the committee's deliberations, may recommit it either to the same or another committee. Sometimes the minority in a committee feels so strongly about the matter that they make a separate report. The status of the bill before the legislature may then be affected by the adoption of either the majority or the minority report. Thus, in states where an unfavorable report causes the bill not to be placed on a calendar, or to be placed on a calendar from which it is not removed except by motion, adoption of that report will make a considerable difference in the chances for the bill to reach final passage.

The New York Assembly rules provide that a report of a committee must contain the name of the committee making the same, the name of the introducer of the bill, or other matter reported on; the title, if a bill, with its numbers (this will include not only the introductory number but the print number), and a statement that it is reported favorably, with or without amendments, adversely, recommending concurrence in Senate amendments, or for repassing a Senate bill which had been recalled and amended. All that is required, if the report is on a resolution, petition, memorial or remonstrance, is that the report must contain recommendations, if any, of the committee. Under this rule, the reports of all committees, except the Committee on Revision and on Printed and Engrossed Bills, must also contain, except in the case of a report for reprint and recommittal, the names of the members present when such report was agreed to and how each member voted thereon, and a record of these facts is entered in the journal of the Assembly.

These stipulations regarding committee reports in the state of New York are much more specific and inclusive than almost any of the rules of the other legislatures; but the actual committee reports of such legislatures are nevertheless substantially the same. In Nebraska alone, the committee is required to give the reason for its report. In New York and all other states, reasons are rarely given (see ¶ 219 on legislative intent).

¶ 175. Acceptance or Rejection

The acceptance of a favorable report does not pass a bill. The general rule is that *adoption* of an unfavorable report kills it. *Acceptance* does not have this effect. The word "acceptance" is used only to designate receipt or acknowledgment. Reports

recommending amendments, if adopted, merely place the bill together with the amendments before the house for consideration in that form. If the report is rejected, it is either recommitted for further consideration or the house proceeds to consider the bill in some other form than that proposed by the committee. Thus, if the committee reports the bill with amendments, the report may be rejected and the bill as introduced substituted for consideration. Or there may be a whole new substitute bill considered in place of the committee recommendation. In Massachusetts, the term "accepted" when applied to an unfavorable report results in the bill's receiving the treatment proposed by the committee (see ¶ 226).

¶ 176. Return to Committee

When the assembly disagrees with the recommendations of the committee, such disagreement may be based on the thought that the bill should become law but not in the form recommended; or the assembly may consider that the recommendation of the committee is not the right one. The bill may, of course, be amended from the floor, killed in spite of a favorable report, or passed in spite of an unfavorable one. But when a bill is recommitted, it is primarily because the sense of the house is that further consideration should be given to it. Thus, while feeling may be that the bill is in need of amendment, no one may have given sufficient study to the matter to be able to propose exactly the kind of an amendment required; or the house may be of the opinion that further study might cause the committee to change its views and report the bill favorably which had previously been reported unfavorably, or vice versa.

Recommitment in that case also means that the house is not sure of its opinion; at least not sure enough to dispose of the matter at once, and that it is willing to be guided by the committee recommendation if there is sufficient study, which it feels may not have been given up to that point. However, recommitment sometimes has other significance. In Rhode Island, bills not reported out of committee by the 50th day are dead; so in order to keep them alive, they must be reported out before that day. They are then recommitted because the committee has not yet reached them. Here recommitment is merely a technicality, in avoidance of the purpose of the rule. At other times, recommitment is a dilatory tactic to get the bill out of the way without bringing it to a vote at that time. In New York, it is a common practice to withdraw bills from committee, amend them on the floor, and then return them to the committee from which taken.

LEGISLATIVE PRACTICE IN CONNECTION WITH THE ANNOUNCEMENT OF THE DATE OF PROJECTED HEARINGS ON BILLS

The practice in the various states on this subject is classifiable as follows:

1. A date is fixed for a hearing on almost every bill introduced, and this date is posted or published at least several days in advance of the hearing so that all interested parties may attend.

2. Hearings are arranged by special request addressed to the chairman of the committee in question or upon the initiative of such chairman, and

(a) notice of such hearing is published or posted in a public place or made available for inspection in a public place, so that anyone who desires to do so can see at a glance every day all the bills on which hearings are to be held several days hence by consulting just one easily accessible public source of information;

(b) such hearings are posted or published in one place but so soon before the hearing takes place that it would not be practical for anyone living at a distance to attend who did not already know that the hearing was to be held, for instance, the night before or the day of the hearing;

(c) such hearings are not published in any central place so that in order to ascertain if a hearing is to be held, it would be necessary for anyone other than those for whom the hearing was arranged to make a daily inquiry of the clerks or chairmen of every committee.

The states are classified according to the foregoing groups in the table below. Distinction must be made between notices of hearings and mere notices that a committee proposes to meet at a certain hour of the day. The latter information is usually publicly posted, but it does not convey any information regarding projected hearings.

Alabama	2(c).
Arizona	2(c).
Arkansas	Occasionally hearings are listed on the blackboard which lists committee meetings so as to fall within classification 2(a) or 2(b), but more frequently the classification is 2(c).
California	Most frequently 2(a), publication being printed daily and in the weekly history. Occasionally, 2(b) or 2(c).

Colorado ..... 2(c). On important bills chairmen ask wide publicity and set hearings several days in advance.

Connecticut .. .1.

Delaware .. . .2(c).

Florida ....2(c).

Georgia .. .... 2(c).

Idaho . . ..2(c).

Illinois . . ... 2(a), except toward end of session, then 2(b).

Indiana .2(b). Occasionally the chairman will privately inform committee members and selected interested parties without public notification of meeting.

Iowa . .....2(c),

Kansas .....2(c).

Kentucky ....2(a).

Louisiana . .The classification is 2; the subclassification differs from time to time.

Maine .....1.

Maryland .....2(b).

Massachusetts ... .1.

Michigan ..... .2(a).

Minnesota .....2(c).

Mississippi .....2(c).

Missouri ... . 2(b).

Montana .. ..2(b).

Nebraska .....1.

Nevada .. ..2(c).

New Hampshire ..2(a).

New Jersey.. ... .2(a).

New Mexico .....2(c).

New York..... ...2(a).

North Carolina ....Several newspapers publish advance notice of hearings on bills of controversial public interest and hearings are also posted on the bulletin board in the rotunda of the Capitol, but there are no rules requiring such posting within any particular length of time before the hearing.

North Dakota.... .2(b). Except near end of session when no posting is done.

Ohio	1. Not on *every* bill introduced, but *only* after bill is sent to committee by reference committee. Period of notice in advance ranges from 24 hours to two weeks.
Oklahoma	2(c). This is the general rule although some attempt has been made to conform to 2(b).
Oregon	2(c). Except as to bills of major importance which are given publicity.
Pennsylvania	2(b).
Rhode Island	2(a). Posted in Senate and House lounge.
South Carolina	2(c).
South Dakota	2(b).
Tennessee	2(b).
Texas	1.
Utah	2(c).
Vermont	2(b).
Virginia	2(c).
Washington	2(b). This is the general rule although sometimes considerable notice is given and not all hearings are posted.
West Virginia	2(a).
Wisconsin	1.
Wyoming	2(c).

CHAPTER 16

PROCEDURE BETWEEN SECOND AND THIRD READINGS

¶ 177. Significance of Second Reading Status

The second reading of a bill usually takes place when, having been reported out of committee, it is placed upon the calendar of business, or after it is reached on that calendar (see ¶ 148). The bill is now on *order of second reading*, which describes the status of bills which have been read a second time and not yet read a third time. During this period, all the important work determining the fate of a measure before the legislature, so far as the body as a whole is concerned, is carried out. The preliminary work has been done in committee and now is the opportunity for debate and the motions incident thereto either on the floor or in committee of the whole (see ¶ 74, 179). The time for public hearings has now passed in this house unless the bill is recommitted, but the whole membership now has its chance for study, change and argument. The rules of procedure in debate, the method by which the floor is obtained for this purpose, the number of times which it is possible to obtain the floor to address oneself to a question, and the powers of the presiding officer are all treated in ¶ 92 et seq.

¶ 178. The Calendars

The calendar is a table or enumeration of bills for the consideration of the legislature. It is from this list that bills are brought to a vote by the whole house membership. In general, there are two principal groups: The first classifies calendars into those on which bills are placed either to receive regular, preferred or delayed consideration; the second, upon whether the bills are to be contested or not. There are various names for these classifications in the several states and in Congress, including *general calendar, general file, general orders, special calendar, special orders, orders of the day, special file, consent calendar, adverse calendar, second and third reading calendars.*

On the *general calendar* are placed bills reported favorably from committees, as well as those which are placed there directly without committee reference. The normal procedure is to take bills from this calendar in the order in which they are placed there.

The *special calendars,* or *special orders of business,* are those on which bills are placed which are to receive preferred attention because (theoretically at least) of their importance or urgency. This is sometimes done (as in Congress) by the adoption of a special rule reported by the rules committee. Bills of certain classes, e. g., appropriations, often have privileged status and are virtually, if not in fact, upon a special calendar.

The passage of non-controversial measures is accomplished either by a special *unanimous consent calendar,* or by a rapid weeding-out process from the general calendar. In Congress, it is the consent calendar which provides a means for a quick disposition of such measures.

The general rule is that bills reported unfavorably go on the general calendar, together with those which have received favorable reports, but this procedure varies. In Congress, no bill reported unfavorably is placed on the calendar except at the request of the committee. In Alabama, such bills are placed on an *adverse calendar* from which they are not taken for consideration except by a motion to that effect.

In the Congressional House of Representatives, there are several calendars to which all business reported from committees is referred. The *union calendar* carries all bills raising revenue, general appropriation bills and bills of a public character directly or indirectly appropriating money or property. The *house calendar* carries bills of a public character not raising revenue nor directly or indirectly appropriating money or property. Bills which are on the house or union calendars may, upon request, be placed on the *consent calendar* referred to above.

Because of the large number of bills falling under that classification, the House has another classification known as the *private calendar.* On this are placed bills affecting only one person, corporation or locality. The states mix such measures on the general calendar with bills of state-wide application.

There are also special calendars for motions and other purposes.

In the Congressional Senate there is just one calendar to which both public and private bills are referred.

The large number of bills regularly before Congress requires manipulation and liberty with the calendar not necessary or customary in the states. For example: on a certain day, called *Calendar Wednesday, congressional committees are permitted to* call up some favorite bill which has been before them for consideration; the *"morning hour,"* an infrequently used form for the

same purpose; suspension of rules (also used in the states); but most of all through action by the rules and steering committees (see ¶ 70, 71).

In Ohio, the calendar is prepared with a black dividing line. When bills are reported out of committee, they are placed on the calendar below this black line and there they remain until the rules committee takes them and places them above the line. Until this is done, no bill will be reached for a vote in the regular course of business, the rules committees of both houses thus acting as steering committees throughout the session.

¶ 179. Disputed and Undisputed Measures

While the fate of most bills is decided in committee, a certain number of them find an assembly unwilling to accept a committee's report, at least not without a discussion. In the states, the prevailing method is to read bills from the regular calendar. If a bill is unopposed, no member interposes an objection, and the formality of passage is rapid. If any member wishes to prevent passage in this way, his single objection is enough. He may ask that the bill be "passed by" (which should be carefully distinguished from "passed" in interpreting legislative reports), or he may make a motion, as to strike out the enacting clause, or strike from the calendar. All such measures are held for debate another day, while the balance are advanced to third reading or final passage. It may be that a member interposing an objection merely wishes to ask a question regarding the bill, its purposes or effects, or he may be in active opposition to it. In any case, his action will prevent the quick procedure which unanimous consent entails. Now when it is reached among the group of challenged bills, questions may be asked and debates may ensue. The proceedings of the debate are generally fixed by rules adopted by each house (see ¶ 86). Where there is no specific rule to cover a point, these written rules will often refer to the "rules of parliamentary procedure," or may specifically mention Cushing's or Jefferson's Manuals of Parliamentary Practice (Part III). In the absence of a special rule, debate is usually unlimited, and the presiding officer has no right to limit, extend the limit, or close the debate. However, special rules are often brought forth for this purpose (see ¶ 117); that is, a rule may be created for the purpose of taking care of the particular bill and this is usually upon recommendation of the rules committee (see ¶ 70, 77). Debate is sometimes cut off or prevented altogether by the ancient motion known as a demand for the previous question (see ¶ 128). The closing of debate and the intermediate killing

of a bill can be accomplished by other means as explained below, and these means are now more generally used than the expedient of the previous question. Where there is no cloture and no cutting off of debate, there is an opportunity for a minority to defeat a vote upon a measure by what is called the filibuster (see ¶ 116). It is the duty of the presiding officer to facilitate debate and provide fair opportunities for that purpose within the rules of order and procedure. Some matters, of course, are not debatable (see ¶ 110). It is proper to allow the author of a debatable motion the last word in such debate.

¶ 180. Suspension of Rules

The normal order of procedure may at any time be suspended by a vote fixed by the rules of the house, in matters of urgency, provided the one making the motion can be recognized by the chair (suspension of the rules is a privileged motion). Whether a matter is urgent and whether an emergency exists is a question for the respective houses to decide and is not reviewable by the courts. Moreover, it has been held that a presumption exists concerning an emergency where the rules are suspended.[1] The rules suspended include readings on separate days, and sometimes reference to committee and other steps. Suspension of rules occurs most frequently in the case of measures which have been discussed and agreed upon outside the legislative chambers, where only formal passage is needed to give expression to the lawmakers' intent. Georgia House rules 43 and 44 give provisions regarding the suspension of rules which are common in part or in whole to nearly all states.

> "The rules of this House known as Constitutional rules, shall in no case be suspended, all other rules shall in no case be suspended, nor changed, nor the order of business be changed, except by a vote of two-thirds of the members voting; Provided, however, that in order to so change or suspend the rules, or change the order of business, said two-thirds so voting in favor of said change or suspension shall constitute a majority of the members of the whole House.
>
> "No suspension or changes or addition to these rules shall be made, unless such proposed change or addition or suspension of these rules be first referred to the Committee on Rules and reported back to the House. Provided, however, that immediately after the confirmation of the Journal on the day following the introduction in the House of the

[1] McCulloch v. State, 11 Ind. 424.

proposed change or addition to these rules the Committee on Rules shall report the same back to the House. A failure to so report such proposed change or addition to these rules for two days shall automatically bring said proposed change or addition before the House for consideration."

¶ 181. Action in Committee of the Whole

The committee of the whole is the customary vehicle for the consideration of measures which are contested. Here bills are taken apart, discussed, amended and gotten into condition for further floor action.

Procedure in committee of the whole is free of some of the restrictions imposed upon action taken upon the floor, and it is for this reason that resort is had to the fiction of changing the nature of the whole assembly from its status as a branch of the legislature to that of a committee. For further discussion of the nature of this committee, see ¶ 74, supra.

¶ 182. Floor Action and Amendments

The work of the committee of the whole may put a bill in such shape as to expedite its further consideration; but it is no more binding upon the house than the recommendations of any other committee. The amendments proposed in the committee must still be adopted, and any new amendments may now be made from the floor. Further debate is still in order, though the matter may have been debated in committee of the whole, but is subject to the somewhat more restricted procedure of the floor. Numerous other motions which are in order will be discussed in later paragraphs. An amendment adopted on the floor, regardless of its origin, becomes a part of the bill and later votes upon the bill will be as thus amended.

¶ 183. Call for a Division of Propositions

If there are several parts to an amendment which may be readily separated, a motion may be made to divide a question, that is, separate the amendment into various parts so that they may be accepted or rejected on their respective merits. This is an alternative to proposing an amendment to an amendment by striking out or changing certain portions and is sometimes less complicated. In the absence of a rule to the contrary, it is not a member's right to call for a division, but the wish must be put as a motion in the usual way. Where there is a rule, or when such a motion is carried, the presiding officer will divide

the amendment in the manner and to the extent which its nature may permit.[2] The term "call for a division" is also used in a totally different sense with which this motion should not be confused, namely, to require that members voting on a proposition should stand to be counted, raise hands, etc. (see ¶ 127).

¶ 184. Non-substantive Amendments

Changes in section numbers, spelling, or other amendments which do not affect the sense may customarily be made by engrossing clerks or other competent officials, without the necessity of an amendment from the floor. Punctuation, of course, may often alter the meaning of a bill, and for this reason its insertion by other than a committee or the membership is a heavy responsibility. However, in the state of Pennsylvania, bills are introduced without punctuation of any kind, and this job is left to administrative officials especially charged with that function.

¶ 185. Intermediate Defeat

A bill may be defeated without the necessity of waiting for it to be placed upon its third reading and final passage. Motions to bring this about are made by the enemies of the measure either because they consider it not worthy of the time which must be taken to allow it to pass through the procedure to final passage, or, more frequently, because they are unsure of the final vote, wish to dispose of it, or ascertain its strength without the risk of passage. If a motion designed to defeat the bill before final passage fails, the bill is not thereby passed and so the opponents have nothing to lose by making the motion. If the motion, on the other hand, succeeds, they have accomplished their purpose. The choice of methods of defeat are more or less a matter of strategy and depend upon time and circumstance. The following expedients are available:

1. Withdrawal by the author
2. A motion to strike from the calendar
3. Tabling
4. Indefinite postponement
5. Postponement beyond adjournment
6. Moving the previous question and obtaining a negative vote
7. Amendment to strike out the enacting clause
8. Holding in committee beyond a certain time

[2] Cushing's Manual of Parliamentary Practice.

¶ 186. Withdrawal

No matter may be withdrawn from the attention of the legislature after it has once been submitted, without the permission of the house which has it under consideration. But a request may be made for leave to withdraw and if this is granted, withdrawal from the house has the same effect as though it had never been proposed and it is no longer in a position to be acted upon for the rest of the session. A form of unfavorable committee report in Massachusetts is "leave to withdraw." Upon acceptance of this committee report, the bill is killed and the petitioner is permitted to remove it.

¶ 187. Striking from Calendar

The calendar is a list of bills to be considered by the legislature in their order. Any bill not on that list is not on the special or general order of the day. In short, such a bill is not part of the business before the assembly as a whole. When a motion is made and carried to strike a bill from the calendar, it is then no longer before the house for consideration unless and until restored. Having been stricken from the calendar, the bill is now not before any committee nor will it come up automatically at any time before the legislature, but the situation may be cured by a motion to restore to the calendar.

¶ 188. Tabling

Tabling is one of the subsidiary motions. That is, it is subsidiary to another motion and can only be proposed when the motion to which it applies is pending. Its original and legitimate use is a friendly one. A tabled bill may always be taken from the table at any time in the course of the session until final adjournment; and if a motion to take it from the table is defeated, a motion may later be renewed any number of times after intervening business, and when the bill would normally be in order. Properly, the object of tabling is to hold the bill in its position while disposing of some more pressing matter, or some matters precedent. Thus, a bill may be tabled for printing, tabled for reference to a committee, or tabled until an emergency matter is gotten out of the way. But tabling has an unfriendly use, and one for which it was not originally intended. This use is to suppress the bill and even to cut off debate before it is started. In this use, where it effectively results in killing the bill for the session, it is more drastic than indefinite postponement because

indefinite postponement is a debatable motion while tabling is not. The rule that tabling is not debatable arises out of its legitimate use. Since it is only a temporary measure, to lay the bill aside and to come back to it as soon as other matters are disposed of, debate on the motion to table would defeat its purpose by preventing consideration of the other matters which it is desired to undertake. As a measure of intermediate defeat, it has several advantages: Only a majority vote is necessary as distinguished from the previous question which requires two-thirds, yet it stops discussion; it takes precedence over every debatable motion of any rank; there is no risk involved, since failure to carry the motion to table does not pass the bill. Opposition not sure of itself may attempt this as an expedient to suppress the bill and also as a test of strength. As a measure for intermediate defeat, however, it also has the disadvantage that it is not final. There is always the chance throughout the session that sufficient votes may be mustered to take it from the table, which has to be done by a new motion duly seconded in the usual way. When legitimate or friendly use is made of the motion to table, the motion is sometimes routine, sometimes significant. Tabling for printing, or for committee reference, for instance, is routine. Tabling for the purpose of taking up some more pressing business is significant in that it shows that it is still desired to retain it in active consideration. Without comprehension of the policy or mood of the members who tabled the bill, simple knowledge of the fact that it has been tabled does not indicate whether it is a hostile or friendly move.

¶ 189. Postponement

Postponement is similar to tabling in that the object is to continue consideration at another time; but in tabling, the other time is not mentioned, while in postponement a specific time is stated. Sometimes resort is had to the expedient of postponing to a date on which the legislature will no longer be in session. This is not the originally intended use of the motion but it has the effect of killing the bill.

¶ 190. Indefinite Postponement

A motion to postpone indefinitely is a proper form of intermediate defeat which, if adopted, disposes of the matter for the balance of the session unless reconsidered. Here again, failure to carry the motion does not result in passing the bill and so the enemies of the measure take no risk of advancing it by making

the motion. Unlike the motion to table, it may be debated. Indeed, the motion is sometimes made to enable further debate where the right to debate has been exhausted on the bill itself on the floor. If the motion to postpone indefinitely is defeated, the defeat is not subject to reconsideration; but it is subject to reconsideration if adopted.

¶ 191. Moving the Previous Question

As indicated elsewhere (see ¶ 128), moving the previous question in the United States is for the purpose of shutting off debate and bringing the matter to issue at once. Its use in England, if decided in the negative, is to kill the measure either for the day (if the question has been put: "Shall the main question be *now* put?") or for the entire session. If a motion is decided in the negative in the United States, debate resumes and the bill is in the same position as it was before. It is as though, in the United States, the question were: "Shall we stop debate now and vote on this or shall we go on with our debate?" While in England, the question is: "Should this matter be considered today or at all?"

¶ 192. Striking Out the Enacting Clause

At any time when amendments are in order, an amendment may be proposed that the enacting clause of the bill be stricken out. This, of course, is not the regular purpose of a motion to amend and does not have the intention that the bill should be further considered as in the case of other amendments. If the motion is carried and the enacting clause is stricken out, the bill cannot become law, since a measure without an enacting clause is usually a nullity even if passed on final reading (see ¶ 138).

¶ 193. Holding in Committee

A bill which is held in committee, of course, cannot become law. In states where committees are not required to report bills within a given time, the committee may vote not to report it out. This action is sometimes referred to as "killing in committee," and this does not appear in the journals with the records of the proceedings on the floor. Or, the committee may simply fail to give any consideration to a bill and merely allow it to die in the committee room. The term "died in committee" as used in most states, merely means that the legislature has adjourned *sine die* without having received the committee report

on the bill. In Rhode Island after the fiftieth legislative day, *no bill* may be considered by the legislature which has not been reported out of a committee. In order to circumvent this rule, the committees report out a large number of bills to which they have not yet given sufficient consideration, but which they do not desire to have killed in this manner. The bills are reported out with the understanding that they will be immediately recommitted. When this is done, the technical requirement that the bill has been reported out of committee *not later than* the fiftieth legislative day has been satisfied. The rule says nothing about *keeping* the bills out of committee after that day. This is another example of a legislature going through activity to defeat its own will expressed in its own rules. Theoretically, the purpose of the rule is to regard as unworthy of consideration any bill which the committees have not seen fit to consider or report within ten legislative days of the end of the session. Or, looked at another way, it is considered unwise to pour a large number of bills out of committee and cause a legislative jam within ten days of the end of the session. If the legislature were of the opinion that it could readily handle any amount of measures reported from committees during the last ten days, the legislators could remedy the situation by abolishing the rule. They prefer, however, to retain the rule and frustrate its purpose. Of course, not all bills are thus reported out of committee and recommitted. A number of them do die after the fiftieth day by being retained in committee. If only a few were subjected to the expedient of reporting out and recommitting, there would be reason for retention of the rule and its circumvention, but this is not the case. Further, if the legislature felt, as it might well do, that fifty legislative days were not enough to consider all the matters before it, and that it should not be confined to a maximum number of legislative days, that too could be remedied by a constitutional amendment. However, here we merely see one of the innumerable facets of human nature at work. In New York, near the end of the session, the Rules Committee takes over all the bills left alive in the standing committees (see ¶ 70). The standing committees vote to determine which bills are to be killed in committee and which are to be relinquished to Rules.

¶ 194. Advancement to Third Reading

The question is now on "advancing" the bill to the status of bills on third reading. That is, the measure is to be advanced from its present position to a calendar of bills which are to be

read the third and final time. When that question has been decided in the affirmative, the bill is on its way to passage. A motion is also in order to postpone consideration to another day, specifying the day. The proper purpose of such a motion is to allow time for obtaining additional information, or for whatever reason to take up consideration again at a later and more convenient time. Occasionally this motion is used to kill a bill by postponing it to a date when the legislature will certainly not be in session [2] (see ¶ 189, 190).

¶ 195. Engrossment—"Perfection"

If the bill has been amended, and often even if there is no amendment, it is ordered to be engrossed. Engrossment consists of rewriting the bill with its amendments and making it ready for final consideration. The word literally means writing "at large" and sometimes this is actually done so that the engrossed copy is in larger print or writing. In Massachusetts and Maine, engrossment does not take place until after final reading and is virtually equivalent to final passage, although passage to be enacted must still be done. Florida House rule 50 sets forth engrossing procedure generally similar to those in other states as follows:

> "Before any bill, joint resolution or memorial requiring three readings shall be read the third time, whether amended or not, in the case of House Bills of a general nature, and in all cases where an amenndment shall be adopted to any of them whether local or not in nature, it shall be carefully engrossed by being typewritten without erasure or interlineation, on strong white paper, the same to be done under the Direction of the Engrossing Committee of the House; and in the case of any Senate bill which shall be amended in the House, the amendment adopted shall be carefully engrossed in like manner and attached to the bill amended in such manner that it will not be likely lost therefrom. Any motion to waive the rules and immediately certify any bill, memorial or joint resolution to the Senate shall be construed as a motion to immediately engross the same, if engrossment is required under this rule, and certify the same immediately thereafter to the Senate, and in the case of Senate bills which have been amended in the House, shall be construed to mean that the amendments adopted shall be immediately engrossed and attached to said bill before it is transmitted to the Senate. All bills referred to the Engrossing Committee shall be carefully examined in cases where no amendments have

[2] Cushing's Manual of Parliamentary Practice.

> been adopted to the same, and if it shall be found that the bill is fairly typewritten without clerical error, substantial erasure or interlineation, the bill may be returned as engrossed without being rewritten. Nothing in this rule shall apply to Local Calendar bills which have not been amended in the House. All engrossed amendments shall be made in duplicate to Senate bills."

In Missouri the term used is "perfected." When a bill is reported out of the committee in the house of origin, it goes on the calendar for perfection. When it comes up for consideration, it is amended and then "ordered perfected and printed." The bill is then reprinted with the amendments adopted by the house of origin. It is then a "perfected" bill which comes up for third reading and final passage in that house. The bill then goes to the second house for action, at which time it may be amended. The bill is not rewritten again until all amendments have been agreed to by both houses and the bill has been passed in the same form by both houses and is ready for the governor's action. At this time, it is reprinted under the caption, "Truly Agreed to and Finally Passed." In some cases there may be no difference in text between the "Perfected" bill and the "Truly Agreed to and Finally Passed" bill, but usually the latter will contain some amendments. The bill captioned "Truly Agreed to and Finally Passed" is then the law copy as soon as it has been signed by the governor, except in the case of appropriation bills, which may be modified by the governor (see ¶ 163, 214).

¶ 196. Negative, Positive and Abstaining Votes

In the absence of a rule to the contrary, it is not the duty of a member to vote upon a proposition put to the house by the presiding officer (but some states specifically require it under penalty). If he fails to vote, his silence is the equivalent of voting with the prevailing side. If there is no opposition, even a single affirmative vote will pass a measure if all the others should abstain, so long as there is a quorum. It is permissible to change a vote at any time before the presiding officer counts it or announces the result. He may also ask permission to change his vote for the purpose of moving considerations after the result has been announced. This is necessary if his original vote was not on the prevailing side.

¶ 197. Final Action

When the bill is ready for final action, the bill is read a third time and the question is put: "Shall the bill pass?" Amend-

ments are not now usually in order, but there are exceptions. Michigan Senate rule 46, for instance, provides as follows:

> "(a) No amendment shall be received for discussion at the third reading of any bill or joint resolution recommended for passage by the Committee of the Whole, unless seconded by a majority of the Senators present and voting thereon; and it shall require the vote of a majority of the Senators-elect to adopt any such amendment.
>
> "(b) Whenever the rules shall be suspended to put a bill that has been reported from a standing committee or from the Committee of the Whole on Third Reading for immediate passage, and said bill is amended on its Third Reading, the motion for suspension of the rules shall be deemed to include the suspension of Rule 37 (requiring amendments to be printed in the journal.)
>
> "(c) Whenever the previous question is ordered on the Third Reading of a bill, any amendments to the bill that have been filed with the Secretary prior to the ordering of the previous question shall be considered, but said amendments shall not be debatable."

When a bill has been read a third time and it is then desired to amend it, in states whose procedures do not permit amendment on third reading, it is "recalled to second reading" and by this fiction the amendment is in order as it would not be after a third reading. Sufficient affirmative votes pass the bill; insufficient votes "kill" it or final action may be postponed to a day certain, or indefinitely. Ordinarily a majority of those present voting aye will pass the bill. This is not always the case however. For a full discussion of majority rules see Chapter 11.

¶ 198. Adoption of Emergency Clause

A separate vote is usually required to cause a law to take effect earlier than a non-emergency measure. It is customary that this decision shall be made by more than a majority of the members. If adopted, it is written into the bill. For form of emergency clause see ¶ 138. The result of an emergency clause is to make it effective at an earlier date, usually upon approval or upon expiration of the time for the governor to approve. Rule 22 of the Illinois House of Representatives is an example of the method of adoption of this clause which gives immediate effect to bills which would otherwise not become effective in that state until the first day of July next after their passage. Where a specific number of votes is required for the emergency clause, compliance must be recorded in the journal. Obviously this is

not possible where a voice vote is taken. In such cases, the emergency clause is not properly adopted and the law takes effect the same time as bills which do not bear an emergency clause.

> "When an emergency is expressed in the preamble or body of an Act as a reason why such Act should take effect prior to the first day of July next after its passage, and when such Act contains a clause or proviso fixing such time prior to the first day of July, the question shall be "Shall the bill pass?" and if declared affirmatively by a vote of two-thirds of the Senators elected, then the bill shall be deemed passed, but, if, upon such vote, a majority of less than two-thirds of all said Senators vote affirmatively on said question, then the vote on said bill shall be deemed reconsidered, and the bill subject to amendment by striking out such part thereof as expresses an emergency and the time of taking effect, and then said bill shall be under consideration, upon its third reading, with the emergency clause and time of taking effect stricken out."

It would seem that the question of whether or not an emergency really exists is usually for the legislature alone to say,[3] but there are a few cases which hold that the legislature's discretion may be questioned.[4] Sometimes the legislature gives the reasons why it considers that an emergency exists, but this is not an essential part of the clause.

The appearance of an emergency clause in the statute as published in the session laws is not conclusive that the clause was properly and effectively adopted. If it was not, this inclusion and publication of the clause in the statute is not sufficient to give it its earlier effective date. Texas is a prominent example of a state which too frequently allows this clause to be printed in the session laws, though not in fact adopted.

In Massachusetts, the governor is empowered, by the 48th amendment to the constitution, to declare a law to be an emergency measure, though not passed in that form by the legislature.

¶ 199. Reconsideration

It may seem strange to many that originally in parliamentary procedure the decision of a deliberative assembly, having once been properly made, was final, and not subject to reconsideration. Indeed, this principle is still in force in the British Parliament.[2]

[2] Cushing's Manual of Parliamentary Practice.

[3] Block v. Hirsh, 256 U. S. 135, 41 Sup. Ct. 458. People v. Moynihan, 200 N. Y. S. 434, 121 Misc. 34.

[4] State v. Smith, 49 S. D. 106, 206 N. W. 233

In the American Congress and throughout the United States, however, any vote taken is still subject to a motion for reconsideration made under the rules provided therefor, so long as the matter is still under control of the body which is to reconsider it. Thus, a bill may be indefinitely postponed, reconsidered on motion, and passed, or it may be killed on third reading and final passage by a majority negative vote, a motion then be made to reconsider, and the bill passed. But once the bill has passed the first house and been transmitted to the other, it is no longer within the power of the first house to reconsider it. Should it desire to do so, its remedy is to pass a resolution requesting the second house to return it. Conversely, if the bill has passed the second house and has been transmitted to the governor, it must be recalled from the governor by resolution before further consideration may be given (see ¶ 216).

In parliamentary procedure, when a bill has been finally killed, and the motion for reconsideration exhausted, the same bill may not be reintroduced and considered again at the same session. In Wisconsin, however, it has been held that though a bill of the lower house has been rejected, it is in order to consider the identical senate bill and pass it. Though no ruling was made on it, the journal clerks concluded that it would be in order to consider an identical bill of the opposite house after having rejected their own bill. The rule therefore only continues to apply, if this interpretation were sustained, to reintroduction and consideration of a new and identical senate bill in the senate, or a house bill in the house, where the previous bill had been rejected. In order to come within the proscriptions of this rule, the new bill must be identical in every respect.[5]

¶ 200. Requirements for Reconsideration

General rules are provided regulating and restricting the time for moving reconsideration. Typical of rules to reconsider is Washington House rule 28 which reads as follows:

> "Notice of a motion for reconsideration on the final passage of bills may be made only on the day the vote to be reconsidered was taken.
>
> "A motion to reconsider can only be made by a member voting on the prevailing side.
>
> "An affirmative or negative vote on the final passage of bills may be reconsidered only on the next working day after such vote has been taken: Provided, That after the

[5] Senate Journal, page 1759, Wisconsin Ruling, June 22, 1931.

fiftieth day reconsideration can only be had on the day the vote to be reconsidered was taken.

"When a motion to reconsider has been carried its effect shall be to place before the house the original question in the exact position it occupied before it was voted upon."

Under the "common law" of parliamentary procedure, the motion must be made on the same or next legislative day by a member voting with the majority. If, therefore, a loser desires to move consideration, he must first ask permission to have his vote changed for that purpose, and this is often done. This requirement does not apply to the "second." Because of the time limit, the motion is in order at any time immediately after the vote on the matter to be reconsidered, up to the time limit for such motion, even if another question is pending, and notwithstanding the fact another member may have the floor at the time. The motion to reconsider and the actual reconsideration must be distinguished. The adoption of the motion to reconsider is not the reconsideration which then follows on the matter itself. Actual reconsideration cannot be made while another question is pending, nor interrupt one which has the floor. In fact, reconsideration has no higher rank or precedence than the matter to which it applies. The final passage of a bill is always a subject for reconsideration, but there are numerous motions which may not be reconsidered, some because there are other procedures which may more properly be used, and others because to reconsider would work an injustice. These include motions to table or take from the table, adjourn or recess, suspend the rules, agreement to conform to the orders of the day, a defeated motion to postpone indefinitely and the motion of reconsideration itself. A motion to reconsider the vote on a bill and to have the motion entered in the journal suspends further action on the measure until the following day. This device may be used to permit the rallying of absent members.

¶ 201. Clincher

Now, since the final expression of the opinion of an assembly may be altered by reconsideration, it is sometimes desired that the decision be made irrevocable, or ways may be devised by the opposition to circumvent the rule so that a slight realignment of the members for or against, due to temporary absences from the assembly or other circumstances, may result in change in the final status of the bill through a fluke. It is the rule that a

motion to reconsider, once tabled, may not be removed from the table by any further motion. Therefore, on bills of a controversial or a political nature, it is sometimes thought to assure final disposition by "clinching" (or "cinching", as it is sometimes called). This consists of making a proper motion to reconsider and then asking that this motion be tabled. When this is agreed to, the matter is finally disposed of. Another device is to move reconsideration and then immediately vote it down. Since reconsideration may not be reconsidered, this too, effectively clinches the action.

¶ 202. Messaging

If the bill passes, it is sent to the opposite house with a message notifying it that the measure has been passed. In the second house substantially the same procedure results as in the house of origin described above. We will, therefore, not repeat the discussion of this action up to passage in the second house, with or without amendment. Procedure after passage will be covered in Chapter 17.

¶ 203. Signing and Delivery

When the bill is in its final form, it is submitted to the presiding officer of the house of introduction, who certifies its passage as a ministerial act, and it then goes to the other house whose presiding officer does the same. This is not a duty which he may refuse to exercise at his option, so that the action "signed by the speaker" or "signed by the president" (in the states) is not an indication of further favorable consideration, but only evidence that such consideration has already been given and must not, of course, be confused with the governor's approval. It is now ready to go to the governor, and some states provide that upon signing it must be delivered "forthwith," either by the committee on enrollment or other designated person or persons. Other states do not seem to be bound even to a description of a time limit. During a session the governor's time to approve or veto a bill begins to run from the time it is officially delivered to him, but this cannot be determined from the date of its passage as it may be held for as much as several weeks before its official delivery by the final official or clerk whose duty it is to do so. After adjournment, the governor's time begins to run from the official time of adjournment in thirty states, but from the time of presentation to him in Connecticut, Georgia, Illinois, Kansas, Louisiana, Maryland, Massachusetts, New Jersey, Tennessee,

Wisconsin and the federal government; and in Vermont also, if the adjournment takes place within three days after presentation.

¶ 204. Ratification in North Carolina

In North Carolina, where the governor has no power of approval or veto, a bill becomes law when it has been "ratified" by both houses. This ratification always takes place on the same day and is accomplished by the signatures of the speaker of the House and the president of the Senate. Laws which take effect "upon passage" date their effectiveness from the day of ratification. This term is also in use in some other states, but nowhere else does it have the same significance, for in no other state is passage in the second house alone all that is ever necessary for enactment into law.

CHAPTER 17

ACTION INCIDENT TO PASSAGE IN SECOND HOUSE

¶ 205. Second House Action

In general, a bill which has passed the first house, upon its receipt in the second, must go through substantially the course of procedure as in the first, that is, reference to a committee, hearings, committee reports, three readings, consideration in committee of the whole, etc. The principal exceptions to this rule are set forth in the special chapters on Maine, Massachusetts and Nebraska. All bills, of course, before they go to the governor, must be in the identical form agreed to by both houses. If a bill is amended in the second house, it must go back to the house of origin for concurrence. The house of origin may concur in the amendments, refuse to concur, or propose new ones. If it refuses to concur or proposes new ones, the second house is notified and if the second house does not recede, accept the new amendments and concur, a conference committee is requested.

¶ 206. Bobtailing

"In legislative assemblies it is not unusual to amend a bill by striking out all after the enacting clause, and inserting an entirely new bill, or to amend a resolution by striking out all after the words 'resolved that,' and inserting a proposition of a wholly different tenor."[1] In America, this practice is known as "bobtailing" or "transforming." It was quite common in the legislature of South Carolina, and is also practiced in Maryland, Indiana and some other states. Its usefulness arises from the fact that near the end of the legislative session when time is too short, either actually or under the rules, for the usual deliberative procedure of introducing a bill in the regular way, referring it to committee, giving it the necessary readings and so forth, and when there is perhaps insufficient approval to muster votes for suspension of the rules, bobtailing a bill which has already passed one house and is well advanced in the second enables the enactment of a last minute measure which otherwise might not become law.

The mechanics of bobtailing consist in taking any bill before the second house which is considered of minor importance, or

[1] Cushing's Manual of Parliamentary Practice.

which the house might very well kill. This bill is amended by striking out all after the enacting clause and inserting the wording of the new measure which it is desired to have rushed through. The title is then also changed to conform, and the bill sent back to the house of origin, not as a new measure but as an old one, amended. The first house has only to concur in the amendment and this does not require a committee reference or three readings on different days or other suspension of the rules.

¶ 207. Evils of Bobtailing

If there is any virtue in the various rules of procedure of the legislature, and the safeguards of the state constitution intended to give due, careful and public consideration to all measures which are to become the laws under which the people must live, then certainly bobtailing is a vicious practice which circumvents these safeguards. If there is a real emergency, it ought to be recognized by a sufficient number of the legislators to allow suspension of the rules, or if the matter is important, it probably should have been considered by diligent representatives of the people earlier in the session. On the other hand, if it is sought to railroad through an unpopular and perhaps undesirable piece of legislation before there is opportunity for publicity and protest, bobtailing is an ideal method for accomplishing this purpose.

The public usually learns of the enactment of a bobtailed law after the legislature has adjourned and the legislators have returned to their homes. South Carolina recognized this evil and tried to abolish the practice in 1942.

The attempt was partially successful, but as late as 1947 the president of the South Carolina Senate found it necessary to make the following statement:

"Gentlemen of the Senate:

"In fairness to all, I wish to make a statement about so-called 'bobtailed' Bills at this time.

"The State Constitution, Article III, provides, in Section 17, that:

" 'Every Act or Resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.'

and, in Section 18, that:

" 'No bill or joint resolution shall have the force of law until it shall have been read three times and on three several days in each house, * * * and has been signed by the

President of the Senate and the Speaker of the House of Representatives: * * *'

"When read together, these sections fix rules for valid legislation.

"Under these sections, it is clear that a Bill must receive three readings on three separate days in each House of the General Assembly to become a law.

"It is equally clear that a Bill becomes a new Bill, requiring three such readings, when amended so that its title relates to a subject not contemplated in its original title.

"Therefore, if a Bill is amended so that the title thereof relates to a subject not contemplated in its original title and is up for consideration in the Senate, I shall rule in obedience to the Constitution that it is a new Bill and must receive the three readings required by the Constitution for its passage by the Senate.

"This ruling also applies to Joint Resolutions."

Other constitutions are more specific. Thus, Section 25, Article IV of the Missouri Constitution provides that:

"No laws shall be passed except by bill, and no bill shall be so amended in its passage through the house to change its original purpose."

The Constitution of Maryland contains provisions similar to those interpreted by the president of the Senate of South Carolina to prohibit bobtailing. Section 29 of Article III of the Maryland Constitution reads in part:

"all laws shall be passed by original bill; and every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title; . . ."

and in Section 27,

"nor shall any bill become a law until it be read on three different days of the session in each House. . . ."

Many other constitutions have similar provisions.

¶ 208. Conference Committee

If the second house insists upon its amendment, it appoints members to a "free committee of conference," and the house of origin does likewise. The term "free conference" refers to freedom of discussion, not limited to the reasons and persuasions of the house as a whole, and freedom of action to the extent

necessary to find the best basis for agreement without, however, adding anything new, or discussing matters not in dispute. Nevertheless, conferees are not infrequently "instructed" by the house which appoints them not to yield on such a point, nor to agree beyond certain defined limits. The conferees consider the different points of view and endeavor to reconcile them. If they fail to do so, and the houses do not recede from their original position, the bill, of course, is dead. The conferees are usually confined in their deliberations to the points of difference and are not permitted to propose other changes to parts of the bill which are not in dispute. The committee may recommend recession from the position of either house on any or all of the proposed amendments, or may propose different amendments on the same subject. The committee report is usually placed on the orders of the day at once, and the report adopted or rejected.

¶ 209. Enrollment

When both houses have finally agreed upon the form of the bill and have adopted it in that form, it is sent to a clerk, a committee, or other official to be enrolled. This procedure usually involves careful scrutiny for typographical errors; it is not unusual for the enrolling clerk or committee to have power to make changes in punctuation, grammar, spelling and minor errors.[2] Any substantive changes made are usually held by the courts to be invalid and sometimes the law is held void,[3] while at other times the enrolled act is disregarded and the provisions of the bill as it actually passed are given effect.[4] There is a substantial difference of opinion concerning the conclusiveness of the enrolled act.[5]

¶ 210. Signatures—"Final Passage"

The term "final passage" is often used in state constitutions, statutes and the rules of the legislatures. The term has a number of meanings depending upon the context. It may refer to final acts done in the first house, or in the second, or it may mean an entirely different thing, namely, enactment into law by approval, expiration of time for approval, or repassage over the governor's veto. Probably in its most accurate use, it would describe the status of a bill after all required readings in both houses, agree-

[1] Michigan State Prison v. Auditor General, 149 Mich. 386, 112 N. W. 1017.
[2] State v. Wis. Board of Medical Examiners, 172 Wis. 317, 177 N. W. 910.
[3] State v. Moore, 37 Mich. 13, 55 N. W. 299.
[4] Perkins v. Philadelphia, 156 Pa. 539, 27 A. 356. Utpatel v. Chicago Title Co., 218 Ill. App. 75.

ment on form, and adoption by the necessary vote, including conference committee report if any, and prior to the attestation of officials.[6] When both houses have finally agreed upon the form in which the bill is to be presented to the governor, it is delivered to the presiding officer of the house of its origin or other designated official for his signature as an attestation of its having passed in that form. It is then sent to the corresponding official of the other house who does the same. Some courts have held these signatures to be necessary to the validity of the law.[7] Others held to the contrary.[8] As the act of the presiding officers is purely ministerial and as the purpose has been held merely to testify their passage to the governor,[9] it would seem to be better reasoning that failure to sign a bill which has properly passed ought not to invalidate it when signed by the governor.

¶ 211. Conditions Prior to Sine Die Adjournment

It is the rule, rather than the exception, that congestion occurs near the end of a legislative session. Human nature seems to be such as to put off work whenever possible until too late to do it with the time and attention it deserves. If there are thirty days within which to prepare and introduce bills, a large percentage of them will be introduced in an unfinished form on the thirtieth day. If there is a limit to a session, the last day will probably find the clock stopped, arresting the passage of official time, with legislators working late into the night to clear up work which might have been accomplished weeks before under more efficient conditions. Hence, many rules and regulations designed to insure orderly, accurate and well-considered procedure go by the boards. The clerk's records are sometimes not brought up to date until days or weeks after the legislature has gone home; enrollment may be delayed or done inaccurately, or by unauthorized persons, and it is difficult for legislators to be sure at all times what they are doing. Sometimes, because of congested conditions, the legislature recesses for a period, usually ten days, to allow the records and enrolling necessary to be completed, to be brought up to date. After this has been done, the bills are then submitted to the designated officers of each house as indicated in the preceding paragraph. No other work

[6] State ex rel. Lamar v. Dillon, 42 Fla. 95, 28 So. 781.
[7] State v. Kiesewetter, 45 Ohio St. 254, 12 N. E. 807. Lynch v. Hutchinson, 219 Ill. 193, 76 N. E. 370.
[8] State v. Missouri Pacific Railroad Co., 100 Neb. 700, 161 N. W. 270.
[9] Speer v. Allegany Plank Road Co., 22 Pa. 376.

is intended to be transacted at this time and the continuation of the legislative session which is necessary to permit the winding up of formalities in this way is referred to as a constructive session.

CHAPTER 18

THE GOVERNOR

¶ 212. The Governor and Legislation

We have reviewed elsewhere the governor's influence on legislation (see ¶ 6) through his messages, his leadership of his party and his control of patronage. We are now to consider his role in the enactment of bills into law which have passed both houses of the legislature in a form on which they have agreed, a role which often gives him a power equal to the votes of 16% of the legislature, where repassage over his veto must be by a two-thirds vote.

¶ 213. Veto and Approval Powers

The governor's right to approve or veto legislation exists as part of the fundamental law of Alaska, Hawaii, Puerto Rico, and every state of the United States, except North Carolina. There the governor has no power over legislation. Every bill, before it may become law, is presented to the governor and if he approves it within a fixed number of days, he signs it and files it with the secretary of state; but if he disapproves, he returns it with his objections to the house of origin, which enters his objections upon the journal at large and proceeds to reconsider. If, upon such reconsideration, a larger number (usually two-thirds) of all the members voting on it agree to repass it, it is sent to the second house which proceeds to do the same; if it passes the second house also, it becomes law notwithstanding the governor's disapproval, but in all cases the yeas and nays are taken and are recorded in the official journals. Returning a bill to the legislature is possible only if it is in session. In case of a recess, as distinguished from sine die adjournment, there are cases which have decided that the veto may be returned to a responsible official of the house of origin.[1]

Other decisions hold that if the house of origin is not in session, the veto cannot be returned and the bill is dead.[2] In some states, the return may be made at the next session of the legislature (Maine, Mississippi and South Carolina). In other states, any bill vetoed by the governor after the legislature has adjourned may be reconsidered by the legislature during the first few days

[1] In re Opinion of Justices, 45 N. H. 607. State v. Holm, 172 Minn. 162, 215 N. W. 200.

[2] People v. Hatch, 33 Ill. 9. In re An Act. . . . concerning public utilities, 83 N. J. Law 303, 84 A. 706.

of its next session (Indiana, Nevada, Florida, and Washington). In Indiana, pocket vetoes may not be reconsidered at the next session but only those filed with the secretary of state. In a California case[3] it was alleged that the Senate deliberately adjourned to prevent the governor from making his return within the required time, but the court refused to inquire into the reason for such adjournment, holding in effect that houses of the legislature were not accountable for their actions in recessing or adjourning even if they should thus defeat the governor's purposes.

Upon approval of a bill, it becomes law according to its terms or according to statute (see ¶ 218). Vetoes properly made after adjournment, and measures not requiring the governor's signature, are customarily both filed with the secretary of state.

¶ 214. Selective Veto

Where the legislature prepares the general appropriations bill, the governor has the power of selective veto so that he need not be faced with the alternative of accepting appropriations of which he disapproves, or of rejecting the entire bill. This procedure is set forth in the South Carolina Constitution, Article IV, Section 23, as follows:

> "Bills appropriating money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. If the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the bill with his objections to the items or sections of the same not approved by him to the house in which the bill originated, which house shall enter the objections at large upon its journal and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of each house of the General Assembly, it shall become a part of said law notwithstanding the objections of the Governor. . . ."

The selective veto on appropriation bills does not permit the governor to change a single indivisible item and his attempt to do so is ineffective.[4] In some states, it is held that if portions of an

[3] Harpending v. Haight, 39 Calif. 189.

[4] Fergus v. Russell, 270 Ill. 304, 110 N. E. 130.

appropriation bill are vetoed after the legislature has adjourned, the veto is ineffective.[5] Another case held that vetoed portions would require repassage by the legislature under such circumstances.[6] Partial vetoes of other than appropriation bills are not permitted except in the state of Washington; but in Massachusetts and Virginia the governors may return measures with proposed amendments.

¶ 215. Governor's Time Limit—Pocket Vetoes

While the legislature is still in session, the governor has a limited number of days to consider what action to take on a given bill. In twenty-two states, the governor has five days to act; in twelve states, ten days; in ten states, three days; and in three states, six days. (The forty-eighth state is, of course, North Carolina.) If he fails to approve or disapprove within that time, it thereupon becomes law without his signature, unless the legislature by its adjournment has prevented return of the measure to it with his objections. In that case, the result falls into three classifications: In most states, his time for consideration is thereby extended; in about half the states, his failure to act after adjournment results in the bill's becoming law without his signature after the expiration of his time limit; in the other half, his failure to act results in what is called a "pocket veto" and the bill is dead, as in the federal government.

Pocket veto, therefore, cannot occur in a state which provides that a bill becomes law if not acted upon by the governor notwithstanding adjournment of the legislature. It is a negative act only, and avoids for the governor the necessity of formal disapproval. After a bill is pocket vetoed, it is filed. In New Jersey, filing by the governor with the State Library is the procedure for pocket vetoed bills.

The time of the governor (and of the President of the United States) begins to run, not from the moment the bill passes the second house, but from the day after it is officially presented to him. A person or official is usually designated as the one who will make the presentation and this need not be by actually handing it to him, but by depositing it in some customary or designated place, or by delivery to his secretary or other suitable person under his direction.[7] Delivery to other officials, of course, is not

[5] Woodall v. Darst, 71 W. Va. 350, 77 S. E. 364.

[6] Carter v. Rathburn, 85 Okla. 251, 209 Pac. 944.

[7] State v. South Norwalk, 77 Conn. 257, 48 Atl. 759.

sufficient.[8] Presentation may be any day from the very day of passage in the second house, and for an indefinite period thereafter. The day when a bill is presented to the governor is not counted in the period allotted to him by the terms of the constitution. The last day, however, is counted. Holidays do not affect the running of the time one way or the other, but there is a special rule about Sundays. The constitution usually provides that Sundays are excepted. Where it does not so provide, it seems that the courts have held that Sundays are included in the calculation where the period is ten days or more,[9] but excluded for five days or less [10] (three states allow six days, but there do not seem to be decisions on this number).

Presentation of a bill to the governor is a formal and necessary step to its becoming law. Where the governor has acquired possession of a bill which has not passed both houses, his approval, of course, is a nullity. However, if a bill has properly passed both houses and the governor acquired possession without the intervening formality of presentation to him, this would probably not be a fatal oversight, and the presumption is that such a bill came properly to his hands.[11] While the legislature is in session, unreasonable delay in presenting a bill to the governor contrary to the wishes of the legislature is improper, especially near the end of the session, because it may interfere with the right of the legislature to override a possible veto or compel it to remain in session longer than necessary in order to be in a position to do so. After the session, delay has no more significance than to give the governor time to accomplish his work.

In Maryland, the governor officially receives bills as he requests them and is ready to consider them, and this may be a month or even more after the legislature has adjourned. In that state, he has six days both during and after the session, but after the session, his failure to act within six days [12] would result in a pocket veto. Withholding of a bill by the clerk in this instance is a virtual equivalent of expiration of the governor's time after adjournment. There are, therefore, states in which the Maryland practice referred to above would not be legal, so that presentation to the governor after adjournment would be a nullity.[13] A bill, of course, cannot become law where it is not presented to the governor and not otherwise acquired and signed by him.

[8] In re Opinion of Justices, 99 Mass. 636.

[9] In re Computation of Time, 9 Colo. 632, 21 Pac. 475.

[10] John D. Farwell v. Matheis, 48 Fed. 363. Tuttle v. Boston, 215 Mass. 57, 102 N. E. 350.

[11] Amos v. Gunn, 84 Fla. 285, 95 So. 615.

[12] Constitution of Maryland, Article II, Section 17.

[13] In re Opinion of Justices, 76 N. H. 601, 81 Atl. 170.

¶ 216. Recalling from the Governor

Bills are sometimes recalled from the governor by the adoption of a resolution requesting that this be done. The recall must be made at the request of both houses.[14] Where a bill is returned, none of the time limit which the governor used up before its return is counted against him when it is re-presented.[15] The governor is not bound by such a resolution, but he complies except in unusual cases. The reasons for the recall may include (1) a desire to amend, or (2) to stop the running of the governor's time to consider.

New York Assembly rule 23 provides as follows for the recall of the bill for the purpose of amendment:

> "A motion to recall a bill from the Governor for correction may be made by or on behalf of the member who introduced the bill, under any order of business, and the votes for consideration and amendment of such bill may be taken immediately upon its return."

Such requests for recall are usually granted, but it is within the province of the governor to refuse to return it. Once a bill has been approved by the governor, or has become law in any other proper way, of course, no further consideration is possible. In that case, any change desired must be effected by the enactment of a new amendatory statute.

As for the second purpose mentioned above, that is, to stop the running of the governor's time to consider, in New York, for example, the governor has but ten days to pass upon matters submitted to him while the legislature is in session, but thirty days thereafter. Near the end of the session his calendar is crowded. A measure may have been sent to him in the belief and expectation that the legislature would adjourn within ten days thereafter, thus allowing him thirty extra days to consider. When it becomes obvious that more than ten days will elapse before adjournment, the legislature may recall a given bill and resubmit it to him at a later date when the time of adjournment is more certain. Why any one particular bill should be thus recalled depends on an infinite variety of possibilities. Whatever the motivating cause may be, the effect desired is that the governor shall have more time to consider.

¶ 217. Numbering of Laws

At some time after bills are signed by the governor, they are given a number and this is the official reference to the statutes as

[14] People v. Devlin, 33 N. Y. 269, 88 Am. D. 377.

[15] State v. Sessions, 84 Kan. 865, 115 Pac. 641.

contained in the laws of that session. This number may be called chapter number or act number. In South Carolina, a "governor's number" is assigned temporarily and later a permanent act number is assigned. The latter is used in the session laws. In Illinois, Missouri and Ohio no such numbers are assigned at all and the Illinois and Missouri laws appear in the bound volume classified by subject. In the published session laws, sometimes, but not often, the bill number is retained as well for reference purposes. Other numbers with only temporary significance are file numbers and enrolled act numbers. A bill is best identified in any state by the year, house and number assigned to it upon introduction, and a law by its year and chapter or act number.

In practically all states session laws are eventually consolidated into a code of revised statutes where they may become sections of various titles or chapters with wholly different numbers; but directly after passage, when speaking of the specific act rather than the entire statute on that subject, the citation should be as indicated. In Pennsylvania, the laws are printed in pamphlet form shortly after approval and given a number preceded by the letters P. L. (Pamphlet Laws). These numbers differ from the act numbers which are assigned upon approval. Numbering of enrolled acts just signed by the governor is not always necessarily the same as the chapter numbers assigned when these laws appear in bound volumes. In Michigan, for instance, the enrolled act numbers are different from the ultimate chapter numbers, and the same is true of the South Carolina governor's numbers. Maryland bills were formerly assigned chapter numbers before they were approved by the governor, with the result that there was a break in the continuity of the actual chapter numbers when finally bound, those which were vetoed being absent. This practice is still followed in Connecticut.

GOVERNOR'S POWERS TO APPROVE AND VETO CONSTITUTIONAL AMENDMENTS, RESOLUTIONS AND MEMORIALS

State	*CA*	*CR*	*JR*	*MEM*
Alabama	No	Yes	Yes	Yes
Alaska	[1]	No	No	No
Arizona	No	No	No	No
Arkansas	No	No	No	No
California	No	No	No	No
Colorado	No	No[2]	No[2]	No[2]
Connecticut	No	No	No	No
Delaware	No	No	Yes	[3]
Florida	No	No	No	No
Georgia	No	Yes	Yes	Yes
Idaho	No	No	No	No
Illinois	No	No	No	No
Indiana	No	No	No	No
Iowa	No	No	No[4]	No
Kansas	No	No	Yes	No
Kentucky	No	Yes	Yes	No
Louisiana	No	No	No	No
Maine	No[5]	[6]	[6]	No
Maryland	No[7]	[8]	No[7]	No[7]
Massachusetts	No	[11]	[11]	No
Michigan	No	No	No	No
Minnesota	No	No	No	No
Mississippi	No	No	[9]	No
Missouri	No[10]	[10]	Yes	No
Montana	Yes	Yes	Yes	Yes
Nebraska	No	No	No	No
Nevada	No	No	Yes	Yes
New Hampshire	No	No	Yes	Yes
New Jersey	No	No	Yes	No
New Mexico	No	No	No	No

[1] Territory—no constitution.
[2] Governor nevertheless sometimes signs.
[3] Depends upon form of memorial.
[4] But joint resolutions are usually submitted to the governor who always approves them.
[5] Debatable, but practice is to submit them for approval.
[6] Not unless the resolution has the force of law.
[7] Resolutions would be effective without signature of the governor but are approved by custom as a matter of form or courtesy.
[8] There are no concurrent resolutions in Maryland.
[9] Mississippi does not use joint resolutions.
[10] Missouri has "J and CR" which are constitutional amendments. There, resolutions are referred to as "JR."
[11] In Massachusetts, the terms "Resolutions" and "Resolves" are used. Resolves are approved—resolutions, which usually merely express opinions, etc., are not. Memorials are designated resolutions.

State	*CA*	*CR*	*JR*	*MEM*
New York	No	No	No	No
North Carolina	No veto power			
North Dakota	No	No	No	No
Ohio	No	No	No	No
Oklahoma	No	No	No	No
Oregon	No	No	No	No
Pennsylvania	No	Yes	No	No
Rhode Island	No	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	No
South Dakota	No	No	No	No
Tennessee	No	Yes	Yes	Yes
Texas	Yes [12]	Yes	Yes	Yes
Utah	No	Yes	Yes	[13]
Virginia	No	No	No	No
Vermont	No	No	Yes [14]	Yes [14]
Washington	No	No	No	No
West Virginia	No	No	No	No
Wisconsin	No	No	No	No
Wyoming	No	No	No	No

[12] The consensus of opinion is that the governor has power to approve and hence veto constitutional amendments, although the constitution is not clear on this point.

[13] Joint memorials, no; concurrent memorials, yes.

[14] The power of the governor to approve or veto joint resolutions and memorials is considered questionable but apparently the practice of approving is followed.

CHAPTER 19

EFFECT AND VALIDITY OF LAWS

¶ 218. When Laws Effective

In English common law, laws which did not specify when they would be effective took effect as of the beginning of the legislative session at which they were passed.[1] This has since been changed by statute in England and it never obtained much footing in the United States. The date when a law takes effect may be indicated in its own substance. A certain time may be specified, or it may bear what is known as an "emergency clause." These clauses declare that an emergency exists, and that immediate enactment of the law is necessary for the public health, peace or safety, and that they shall take effect "immediately" or "immediately upon passage." This means upon approval by the governor, or upon filing with the secretary of state of bills which become law without his signature. Emergency clauses must usually be adopted by a separate vote and often a larger vote than a majority.

Bills which do not specify the time when they take effect become effective according to provisions of the constitution or a statute. Laws passed by the legislatures of states which have the referendum provision usually take effect within ninety days after adjournment. The referendum states which do not follow the ninety-day rule are as follows:

Colorado	90 days after its passage
Maryland	June 1st after session at which passed
Massachusetts	90 days after approval
Montana	July 1st or upon approval after that date
Nebraska	3 months after adjournment
Nevada	July 1st following passage
North Dakota	July 1st after session
Ohio	90 days after filing with secretary of state
Utah	60 days after adjournment

In Illinois the constitution provides that acts which do not carry emergency clauses shall not be effective "until the first day of July next after its passage" (Article IV, Section 13). This has been held to mean that bills which pass before July 1st but are approved after that date become effective upon approval under Article V, Section 16, which says: "if he approve, he

[1] 59 C. J. 1147.

shall sign and thereupon it shall become law." Cases are cited in support of the contention that bills approved on June 30th but passed before that date, take effect upon approval.[2] For complete list of effective dates, see table at the end of this chapter.

The words used to specify when an act shall take effect sometimes lead to uncertainty. Laws which take effect so many days after adjournment are counted from the official time of adjournment, which is not always the same as the actual time (see ¶ 90). An act which takes effect "from passage" is usually taken to mean from the time the final act is performed to make it a law, as governor's approval, repassage over veto, filing with the secretary of state, etc. In West Virginia, it may be in effect retroactive to the date when it passes the second house.[3] In New Jersey, on the other hand, a bill effective on a specified date, which is signed after that date, was held to take effect when signed and not on the earlier date specified in the bill.[4] In making calculations, fractions of a day are usually ignored, and the law is effective the extra number of hours *sooner* rather than later.[5] Greater finesse is required for criminal statutes, and if the hour is known, in such cases it will control, where it would otherwise result in a conviction *ex post facto*.[6] In some states, all acts not otherwise specified become law upon publication (Wisconsin), or proclamation of the governor (Indiana). Elsewhere, local acts take effect on publication and miscellaneous acts may have specific provisions of that kind contained in them. Laws which take effect "from and after" their publication may be effective on the same day published,[7] or the day after publication.[8] "Until 90 days after adjournment" has been held to mean that the law takes effect by excluding the day of adjournment and counting it effective on the first moment of the ninetieth day thereafter,[9] while another view reserves that calculation for the expression: "until the 90th day after adjournment."[10] Distinction must often be made between the operation of the law and the time when it becomes law. The law is in existence when all has been done that needs to be done to put it on the statute books, but it may contain a provision postponing some or all of its requirements until a certain date.[11]

[2] School District No. 41 v. Morgan, 316 Ill. 143, 147 N. E. 34.
[3] State v. Mounts, 36 W. Va. 179, 14 S. E. 407.
[4] McLaughlin v. Newark, 57 N. J. Law 298.
[5] Turnispeed v. Jones, 101 Ala. 593, 14 So. 377.
[6] Moree v. State, 130 Miss. 431, 94 So. 229.
[7] Leavenworth Coal Co. v. Barber, 47 Kan. 29, 27 Pac. 114.
[8] O'Connor v. Fond du Lac, 109 Wisc. 253, 85 N. W. 327.
[9] In re Boyce, 25 Wash. 612, 66 Pac. 54.
[10] Halbert v. San Saba Springs Land Association, 89 Tex. 230, 34 S. W. 539.
[11] Robertson v. Bradbury, 132 U. S. 491, 10 Sup. Ct. 153.

Lack of forethought to use precise and unambiguous terms in specifying effective dates often leads to confusion as may be seen by the number of cases decided on the question of effective dates. The Taft-Hartley Labor-Management Relations Act of 1947 read that it "shall take effect sixty days after the date of its enactment" which caused one government department to declare it effective on the 22nd of August, and another on the 23rd. It was approved June 23. The 23rd of August was the sixty-first day not counting the date of approval, but sixty and a fraction days had elapsed, and this was the accepted effective date. The 22nd was the sixtieth day. While the 23rd seems to be the least strained interpretation, there need not have been any confusion if a few more words had been added, or others used: e.g., "at 12:01 A.M. on the sixty-first day after enactment, not counting the enactment date" or "after the elapse of sixty days after enactment, not counting the enactment date."

¶ 219. Construction and Legislative Intent

The courts will endeavor to carry out the constitutional intent of the legislature and they will ascertain this intent from the language of the statute, ignoring all other sources of information outside such language.[12] Where the language is ambiguous, or cannot be construed from special "construction acts" sometimes enacted for this purpose, and provided the law is not so vague as to be wholly unenforceable, the courts will have recourse to other information to ascertain the legislative intent.[13] When intention must be gathered elsewhere to resolve a doubt, any legitimate source is acceptable, and it may sometimes be shown by reference to remarks made during committee hearings, by statements made by standing committees when reporting bills, by interim committee reports, or by the whole historical background of the legislation. Remarks made during debates rarely appear in the official records of states but they do appear in the Congressional Record. The statements of the personal intention of members made during debates have been held not to be a proper source for the consideration of legislative intent, even when made by the sponsor.[14] Remarks during hearings are seldom enlightening as it is not usual for members of the committee to express their views at such times.

[12] Small v. American Sugar Refining Co., 45 Sup. Ct. 295, 267 U. S. 233.

[13] East Shore Land Co. v. Peckham, 33 R. I. 451, 82 Atl. 487.

[14] U. S. v. Trans-Missouri Freight Assn., 166 U. S. 290, 17 Sup. Ct. 540. Hance Bros. v. American Ry. Exp. Co., 190 N. Y. S. 530, 116 Misc. 653.

Only in Congress do comments accompany committee reports. These have great value in interpretation. In the state legislatures there is little available information which is of any assistance. In Nebraska, however, committees are required to keep a record of their proceedings and must, when reporting a bill, submit therewith a brief statement of the main purpose of the bill, and, if recommended to general file, a copy of all amendments recommended by the committee. Such statement must give the committee's reason for so reporting, and the minority view, if such there be, must also be given. Copies of such statements and amendments are furnished to the members. It sometimes happens, however, that official or unofficial stenographers may have made a transcript of a discussion of the measure and this can usually be ascertained only by making inquiry of the stenographers themselves.

The surrounding historical details are important considerations in these matters. Where a point has not been covered in a law, it is usually not a question of finding out what the legislative intent was, but rather of guessing what it would have been. This has been aptly stated thus: "When a legislature has had a real intention, one way or another, on a point, it is not one in a hundred times that any doubt arises as to what its intention was * * * the fact is that the difficulty of so-called interpretation arises when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it * * * what the judges have to do is not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."[15] In a footnote citing Mr. Justice Hughes,[16] it is also pointed out that the legislature sometimes deliberately leaves its intentions doubtful, this often being the result of compromises between opposing points of view.

¶ 220. Validity

There are a number of requirements under the constitution, statutes and the rules of the legislature, necessary to the validity of a law. In general, the grounds on which a statute may be impeached include (1) improper subject matter, (2) improper form, (3) improper or inadequate adherence to the rules of procedure in its passage. The obstacles to successful impeachment

[15] John Chipman Gray, LL.D., Nature and Sources of Law (Second Edition), page 172.

[16] 1 Massachusetts Law Quarterly (No. 2), page 15.

of a law are great, for the courts recognize many presumptions in favor of a law's validity.

Under the first classification, improper subject matter, there is first of all, unconstitutionality. A law passed contrary to the restrictions laid upon the legislature by the constitution of the state or of the United States is, of course, void and not even the support of public opinion can save it. As to improper form, there are many possible defects. There may be such vagueness that the enforcement of the law is impossible. The enacting clause may be missing, which is usually held fatal [17] though there is some authority to the contrary.[18] The title may be missing, or may not state the subject matter of the law properly. This may [19] or may not [20] be fatal, depending on the state and the constitution. But even though the constitution requires the legislature to enact laws in articles and sections, the courts have allowed laws enacted without them to stand.[21] As to the procedure required for valid passage, the question may turn on whether a law was enacted with an adequate number of votes,[22] insufficient number of readings,[23] failure to record yeas and nays,[24] printing and publishing of local acts,[25] etc.

There are presumptions which prevail in most states to protect the validity of laws passed. Some of these presumptions are prima facie, others conclusive. Thus, the enrolled act is presumed to be the form in which the law was passed, but this presumption may be rebutted;[26] other jurisdictions hold the presumption to be conclusive.[27] Where the courts permit the admission of evidence to dispute the enrolled act, it is the journals of the houses which are consulted, and back of these journals the courts rarely look.[28] Some Arkansas cases have permitted evidence other than the journal.[29]

After an invalid act is on the statute books, it has been held that the legislature may accomplish its virtual ratification by referring to it in subsequent enactments, amending it, etc.,[30] and

[17] In re Govt. Seat, 1 Wash. Terr. 115.
[18] Turner v. McCain, 26 Okla. 132, 109 Pac. 821.
[19] People v. State Contract Commissioners, 120 Ill. 322, 11 N. E. 180.
[20] State ex rel. Cotter v. District Court of Lewis & Clark County, 49 Mont. 146, 140 Pac. 732.
[21] Dorchester County v. Meekins, 50 Md. 28.
[22] First Construction Company of Brooklyn v. State, 221 N. Y. 295, 116 N. E. 1020.
[23] Lewis v. State, 148 Ind. 346, 47 N. E. 675. People v. Illinois State Board, 278 Ill. 144, 115 N. E. 852.
[24] People v. Leddy, 53 Colo. 109, 123 Pac. 824.
[25] Virginia Coal Co. v. Charles, 251 Fed. 883.
[26] Larrison v. Peoria R. R. Co., 77 Ill. 11.
[27] Harwood v. Wentworth, 16 Sup. Ct. 890, 162 U. S. 547.
[28] Byrd v. State, 212 Ala. 266, 102 So. 223.
[29] Booe v. Sims, 139 Ark. 595, 215 S. W. 659.
[30] Attorney General v. Joy, 55 Mich. 94, 20 N. W. 806.

moreover, the courts have refused to disturb an invalid statute on the ground that it would involve too many rights, and substantial and widespread injustice would be caused.[31]

Where only part of an act is in question, the courts will endeavor to save as much of the act as possible, if it is not so drawn that it must, by its nature and inseparability, be enforced or rejected as a whole. Many bills, as explained elsewhere (see ¶ 138), contain what is called a separability clause, specifically declaring it to be the intent of the legislature that if a part of the act is held unconstitutional, the remaining part shall be operative. This statement, however, is precautionary, and its chief purpose is to put on record the intention of the legislature in case that intention should be in doubt, but the courts are not bound by it if they find it in fact an inseparable whole.[32]

EFFECTIVE DATES OF LAWS

Alabama	Penal Acts, 60 days after approval. All others, immediately.
Arizona	90 days after adjournment.
Arkansas	90 days after adjournment.
California	90 days after adjournment.
Colorado	90 days after approval.
Connecticut	Public Acts, October 1. Special Acts, immediately.
Delaware	Immediately.
Florida	60 days after adjournment.
Georgia	Immediately.
Idaho	60 days after adjournment.
Illinois	July 1.
Indiana	Upon proclamation of governor.
Iowa	July 4. Applies to laws enacted at regular sessions only. Laws enacted at special sessions, 90 days after adjournment.
Kansas	Upon publication of immediately effective Acts in official state paper, of others in bound volume.
Kentucky	90 days after adjournment.
Louisiana	20 days after adjournment.
Maine	90 days after adjournment.
Maryland	June 1.
Massachusetts	90 days after approval.
Michigan	90 days after adjournment.
Minnesota	1 day after approval. Appropriation Acts, July 1.
Mississippi	60 days after approval.

[31] Anderson v. Fisk, 36 Calif. 625.

[32] State v. Levitan, 190 Wis. 646, 210 N. W. 111.

EFFECTIVE DATES OF LAWS—Continued

Missouri .....90 days after adjournment. Appropriation Acts, immediately. In the event of a recess for 30 days or more, the legislature may prescribe that laws previously passed and not effective shall take effect 90 days from beginning of recess.
Montana .....July 1.
Nebraska .....3 months after adjournment.
Nevada .....July 1.
New Hampshire ....May 15. Applies to laws enacted at regular sessions only. Laws enacted at special sessions, October 15.

New Jersey .....July 4.
New Mexico .....90 days after adjournment.
New York .....20 days after approval.
North Carolina .....30 days after adjournment.
North Dakota .....July 1.

Ohio .....91 days after the date of filing with the secretary of state.
Oklahoma .....90 days after adjournment.
Oregon .....90 days after adjournment.
Pennsylvania .....September 1. Applies to laws enacted at regular sessions only. Laws enacted at special sessions, immediately.
Rhode Island .....10 days after adjournment.

South Carolina .....20 days after approval.
South Dakota .....July 1. Applies to laws enacted at regular sessions only. Laws enacted at special sessions, ninety-first day after adjournment.
Tennessee .....40 days after approval.
Texas .....90 days after adjournment.
Utah .....60 days after adjournment.

Vermont .....June 1.
Virginia .....90 days after adjournment.
Washington .....90 days after adjournment.
West Virginia .....90 days after final passage by the legislature.
Wisconsin .....The day after publication in the official state paper.

Wyoming .....90 days after adjournment.
U. S. Congress.....Immediately.

PART V

PROCEDURE APPLICABLE TO CERTAIN STATES

CHAPTER 20

MASSACHUSETTS PROCEDURE

¶ 221. General Court

The legislature of Massachusetts operates under a constitution adopted in 1790. It is unique in several respects, and these respects are all in its favor. Perhaps no other state in the union has so close an approximation to universal participation in legislation of all its citizens as has the state of Massachusetts. Not only is legislation expected to be introduced through the request and petition of these citizens, but this is the principal method. Introduction by a legislator is subject to restrictions and disadvantages not applicable to bills originating with the public. The legislature is denominated the "General Court," and this court meets annually to receive and pass upon thousands of petitions for new laws, amendments, repeals and "psephisms."

The most striking differences in the General Court set-up and procedure as compared with the legislatures of other states include: (1) the efficiency resulting from the establishment of joint committees composed of members of both houses; (2) consideration of bills in the second house before they are passed in the first; (3) consideration of bills introduced on petition in either house even after adverse action has been taken in the other; and (4) long, annual sessions, usually lasting about a half a year. These conditions encourage the professional and experienced legislator. Rather than being disadvantages, they offer advantages enjoyed among the principal legislators of the United States only by congressmen and the councilmen of a few of the larger cities.

¶ 222. Introduction

The General Court, then, is so constituted that, under the rules, most of the legislation is derived from petitions of citizens, corporations, associations or groups, accompanied by a bill which

it is thought will accomplish the purposes of the petition. These petitions and bills, however, are not filed by the petitioner but must be filed through a legislator. When a legislator seeks to introduce a bill on his own behalf and without the medium of a petition to support it, he has to be granted leave, and the introduction is said to be "by leave." When "by leave" bills are presented to the House or Senate, they are read. In the House, this reading is the equivalent of first reading, while in the Senate, the reading is for information only. The House and Senate must now grant permission for introduction.

Bills are also introduced by committee. The ways and means committee may originate bills and all joint committees may introduce substitutes for bills before them on petition. These are not strictly introductions in the technical sense but are "new drafts" of other bills introduced on petition and submitted to that committee for its consideration (bills introduced by leave may not be reported in new draft). These new drafts, however, are assigned a new number in the same manner as though the bills were just being introduced for the first time and are thereafter known by that number throughout their progress through the legislature. The governor may also propose legislation at any time, by a message sent to the legislature, and these messages may or may not be accompanied by a prepared bill. The messages with accompanying bills, if any, are referred to committees in the usual way and are the basis of subsequent legislation. The various departments of state file reports and make recommendations for legislation, and these must be received before 5:00 P.M. on the first Wednesday in December preceding the legislative session.

Between the first and second sessions of each General Court, that is, in the odd year, all bills and resolutions, not merely those recommended by the departments of state, must be introduced. In the first session of each General Court, introductions must be completed by 5:00 P.M. on the second Friday in January. The bills introduced in the even years are by committees or by suspension of rules, or based upon those already introduced on time, or by a four-fifths vote to suspend this rule.

Lastly, there is a method of introduction which involves taking from the files and referring to committees bills which, either because they were introduced too late at the previous session, or because they were referred to the present session by the legislature last year, are in a class of bills "referred to the next annual session" and then placed on file there. These

are taken from the file by the clerk upon request of any legislator or legislator-elect and introduced at the beginning of the session. To summarize, bills are introduced

by legislators
  by petition
  by leave (that is, directly by legislators);
by the governor by recommendation, whether or not accompanied by a bill;
by state departments and bureaus in the form of recommendations accompanied by bills to be filed before the first Wednesday in December;
by interim committees;
by motion to take from the files bills referred to that session from a previous session.

¶ 223. Committees—Powers—Amendments and Changes

There are forty-one committees in the Massachusetts legislature: twenty-nine joint, seven House and five Senate, as follows:

Joint Committees:
- Judiciary
- Water Supply
- Agriculture
- Banks and Banking
- Cities
- Civil Service
- Conservation
- Constitutional Law
- Counties
- Departmental Rules and Regulations
- Education
- Election Laws
- Harbors and Public Lands
- Highways and Motor Vehicles
- Insurance
- Labor and Industries
- Legal Affairs
- Mercantile Affairs
- Metropolitan Affairs
- Military Affairs and Public Safety
- Pensions and Old Age Assistance
- Power and Light
- Public Health
- Public Service
- Public Welfare
- State Administration
- Taxation
- Towns
- Transportation

Senate Committees:
- Rules
- Ways and Means
- Municipal Finance
- Bills in the Third Reading
- Engrossed Bills

House Committees:
- Rules
- Ways and Means
- Municipal Finance
- Elections
- Bills in the Third Reading
- Engrossed Bills
- Pay Roll

All committees have the usual powers of recommendation possessed by committees in the several states, the terminology of the reports being referred to in ¶ 225. One of the distinctions in Massachusetts committees' powers and reports has to do with making of changes and amendments before them. Where a bill is reported other than in the form in which introduced, the preferred method is to submit an entirely new bill, and this does not bear the number of the old bill as in other states (e.g. "reported by substitute" or "H. 100 Sub. A"), but it bears a new number and is treated virtually as a new bill. When a bill is introduced, it is accompanied by a petition, or rather the petition is accompanied by a bill; for the petition is the primary document and the bill is only the proposed method by which the purposes of the petition are supposed to be best fulfilled.

If the committee is in accord with the petition but feels that the bill does not meet the purpose adequately, it may, as we have said, report a new bill, or it may report the old bill "changed." These changes are, in effect, amendments, but they are not separately submitted to the legislature for adoption or rejection. The word implies the right of a committee to alter a bill and submit it in any form in which it sees fit, while amendments are changes made after the committee has relinquished the bill, or submitted by the committee for consideration and vote of the membership of the whole house.

To the Rules Committee are referred all motions or orders authorizing committees of the Senate to travel or to employ stenographers, all propositions involving special investigations, and all motions or orders providing that information be transmitted to either house. Also, all motions which create main questions, except those relating to privilege, procedure and similar matters, other than bills and resolves, are referred to the Rules Committee.

The Committee on Ways and Means may originate and report appropriation bills in the House. Bills involving an expenditure of public money or grants of public property, or otherwise affecting the state's finances, are referred to the Ways and Means Committee in the respective houses.

To the Municipal Finance Committee are referred bills and resolves involving an expenditure of city or town money. The

Ways and Means and Municipal Finance Committees of each house may be considered to be acting as a joint committee if deemed expedient.

Joint committees are permitted to report to either house, and not at all necessarily to the house through which the bill was introduced. Their reports are made to one house or the other, having in mind an equal distribution of business between the two branches. *However, those on bills involving the expenditure* of money are referred to the House. Once a report has been made to one house or the other, subsequent reports after recommitment are made to the same house.

¶ 224. Hearings

In this state, an opportunity is provided for a hearing on every bill originally introduced in the legislature, by setting a date, duly published in advance, at which time a hearing will be granted if interested parties appear for that purpose. This, however, does not apply to the bills after they have been reported in the new draft, since these are the result of consideration given on measures for which an opportunity for a hearing has already been provided.

¶ 225. Committee Reports

The standard committee reports are as follows:

Favorable:

1. Do pass, with or without changes.
2. Do pass as amended.
3. Reported in new draft (with a new number).

Unfavorable:

1. No legislation necessary.
2. Referred to next annual session.
3. Leave to withdraw.
4. Ought not to pass.

Joint committees must report not later than the second Wednesday in March on all matters referred to them before the first of March, and within ten days on all other matters. Bills not so reported by the whole committee must be reported by the chairman of the committee within three days after such dates for reference to the next annual session. A four-fifths vote is required to suspend this provision. Motions to extend the time for joint committees to report are referred to the rules committee of both

branches. No extension in any case is granted beyond the second Wednesday in April against the recommendation of the rules committee, except by a four-fifths vote. After the fourth Wednesday in March, the rules do not permit recommitment of any unfavorable reports.

¶ 226. Floor Action on Committee Reports

The acceptance of a favorable report places a bill in position for further consideration but does not pass it. When an unfavorable report is accepted, the action is taken which the committee recommends. Thus, acceptance of a report "leave to withdraw" terminates consideration of the bill and permits its withdrawal from the legislature. Acceptance of a report "no legislation necessary" kills it outright. Acceptance of a report "next annual session" results in reference of the bill to the files for reintroduction at the next session. If a bill is introduced by leave, acceptance of an unfavorable report by one house is sufficient, but any other bill remains alive until the same action is taken by the other house. A bill may be "substituted" for the adverse committee report on all measures except those introduced by leave, and thus the bill is placed on orders of the day for the next legislative session and is then in the same position as if the bill had been reported favorably.

¶ 227. Reconsideration

A motion to reconsider a vote must be made on the same day on which the vote is taken, or before the orders of the day are taken up on the next day thereafter on which a quorum is present. If reconsideration is moved on the same day, a motion shall, except during the last week of the session, be placed first in the orders of the day for the succeeding day. Otherwise, it is considered immediately. Debate on motion to reconsider is limited to thirty minutes and no one member is allowed to speak more than five minutes. These rules, however, do not apply to subsidiary, incidental or dependent motions. A bill may be reconsidered by unanimous consent at any time whatever before it becomes law.

¶ 228. Readings

The first reading occurs after committee report, and the matter is then placed upon the calendar or orders of the day for a second reading. When the bill is reached on the calendar,

the question is whether it shall be ordered to a third reading, and the usual second reading action takes place, that is, debate, amendment, etc. If the bill is ordered to a third reading, it is referred to a committee called "The Committee on Bills in Third Reading." If it is impossible to make suitable revision of a measure, the committee may make an unfavorable report. If the bill is rewritten so as to become a new draft, it will be renumbered as if it were a new bill. Upon receipt of a favorable report of the Third Reading Committee, the bill is read a third time and the question is put whether or not the bill shall be passed "to be engrossed." Debate, and the same motions as were in order in the second reading, are now again in order.

¶ 229. Action in the Second House

It must be remembered that the "second house" of Massachusetts could be the house in which the bill was introduced. As a matter of fact, it is the custom to refer to the house first *receiving the committee report* as the "house of origin" even though the bill was not introduced there. Action in the second house is similar to that in the first and to some extent as in other states, namely, consideration, possible reference to a committee, amendment, return to the other house for concurrence, reference to a conference committee, and so on. The reader should keep in mind that in this state, independence of action of each house from the other may result in House Bill 100, for instance, being first killed in the Senate, then passed in the House, or killed in the House, and later passed in the Senate, or killed in both houses on the same or different dates. In other words, killing in one house (except for bills introduced by leave) still leaves the other house free to consider, and killing or passage may happen in either house first.

¶ 230. Engrossment and Enactment

Passage to be engrossed does not mean immediate engrossment. The bill is engrossed only after it has passed both houses and it is then rewritten in an engrossed form by the secretary of the Commonwealth. Subsequent to this engrossment, the House Committee on Engrossment checks for accuracy and later the Senate committee does the same. If the bill contains an emergency clause, a vote must now be taken before enactment by a roll call, and the question is then put whether or not it shall be passed to be enacted. This question is usually answered in the affirmative as a matter of course, but it is in order at this point to

strike out the enacting clause and thus kill it. No other amendment to engrossed bills is permitted except under suspension of rules.

¶ 231. The Governor

The clerk of the Senate delivers the bill to the governor after passage to be enacted (Joint Rule 20). In Massachusetts, under the constitution, the governor is permitted to return the bill *with suggestions* for amendments instead of, as in most states, to either approve or veto it. After consideration of the suggestions and return to him, he may then either veto or approve in the usual way. The governor also has power to declare an emergency measure a bill which was not passed in that form by the legislature.

In addition, he has power, in case of disagreement between the two houses with regard to the necessity, expediency or time of adjournment or prorogation, and with the advice of the council, to adjourn or prorogue the General Court, not exceeding ninety days, as he may determine the public good shall require.[1]

"Resolves" is the term generally used in Massachusetts instead of joint and concurrent resolutions and these are submitted to the governor for approval. "Resolutions" correspond to simple resolutions and memorials in other states and these are not submitted for the governor's approval.

¶ 232. Initiative Measures

Measures initiated by the people are handled by the legislature in a somewhat different manner from that of ordinary bills. Introduction takes place when an initiative petition, signed by the requisite number of qualified voters and filed with the secretary of the Commonwealth, is transmitted by him to the clerk of the House. It is then referred to a committee and the petitioners and all interested parties are heard. If the proposed law is not passed before the first Wednesday in June, the measure may be amended by a majority of the first ten signers of the petition, subject to certification by the attorney general; or, after additional signatures have been procured, the measures may be submitted to the people at the next state election. The procedure on initiated measures also differs from "regular" procedure in that the governor has no power to approve or veto such bills.

[1] Massachusetts Constitution, Part Two, Chapter II, Section I, Article VI.

MASSACHUSETTS LEGISLATIVE PROCEDURE

Introduction

By governor and state departments
By petition
On leave
By committees
From the files (from previous session)
By initiative

Joint committee reference by clerk

Committee hearings

Committee reports

Bills on petition, initiative or from file:

Favorable

Ought to pass
Ought to pass with an amendment
Ought to pass in new draft

Adverse

Leave to withdraw
No legislation necessary
Refer to next annual session

By leave:

Favorable

Ought to pass
Ought to pass with an amendment

Adverse

Ought not to pass
Refer to next annual session

Acceptance

On petition, initiative or from file:

(1) *Of favorable report:*
By one or both houses:
Places bill on orders of the day.

(2) *Of adverse report:*
By both houses:
Kills the bill or refers it to next annual session as the case may be.

By one house:
Second house may substitute bill for report and proceed with consideration.

By leave:

(1) *Of favorable report:*
By one or both houses:
Places bill on orders of the day.

(2) *Of adverse report:*
By both houses:
Kills the bill or refers it to next annual session as the case may be.

By one house:
Bill is killed for the session.

Rejection

(1) *Of favorable report:*
Favorable reports are not rejected, but the bill may be killed by other available procedure.

(2) *Of adverse report:*
Bill is substituted for the adverse report and placed on orders of the day. But rejection of adverse report does not of itself pass the bill.

MASSACHUSETTS LEGISLATIVE PROCEDURE —Continued

First reading

To calendar

Second reading

Debate on the floor

To Committee on Bills on Third Reading for minor corrections

Bills other than initiated measures only:

Passage to be engrossed

Passage to be engrossed in the other house

Engrossment

Vote on emergency clause in each house

Passage to be enacted in each house

Enactment

To governor (except initiated measures)

Approval

Return within five days with recommended amendments.

Repassage with or without amendments and subsequent approval or veto without further return.

Veto

Repassage over veto by a two-thirds vote of the membership present.

Law without signature

If not approved or returned within five days, Sunday excepted, during session unless legislature adjourns before five days, in which case the bill is dead if not approved.

CHAPTER 21

MAINE PROCEDURE

¶ 233. Comparison with That of Massachusetts

There are some points of similarity between the Maine and Massachusetts peculiarities. The three most prominent are, first, that some action may take place in the second house before a bill passes the first; second, the use and significance of the term "passed to be engrossed"; and third, the use and significance of the term "passed to be enacted." As to the first of these peculiarities, there is this important difference between the two states: in Massachusetts many bills are not acted on in the second house before they pass the first, and such bills follow procedure not too different, in that respect, from the general plan in other states. In Maine, no bill or resolve requiring the concurrence of both houses passes the legislature without participation by each house in every step from committee reference to passage to be enacted. Consideration in the second house in Massachusetts before passage in the first is optional. In Maine it is required. In Massachussetts, where bills are considered in both houses, each house proceeds when it pleases without regard to the action taking place in the other. In Maine, action in one house awaits action in the other, so that only one house is acting on the bill at any one time, and steps take place in regular order, back and forth between the branches.

It is interesting to note, in following the progress of a measure in Maine, that many bills may have the semblance of regular state procedure if concurrent action (except passage to be enacted) is disregarded. Thus, the second house rarely fails to concur in committee reference and acceptance of committee report, and these are mostly formalities. Those used to state procedure elsewhere would be less confused by ignoring all second house action except (a) non-concurrence of any kind and proceedings looking toward reconciliation of differences and (b) passage to be enacted.

¶ 234. Introduction and Committee Reference

Prior to formal introduction, bills are submitted to a joint committee on reference of bills. It is the duty of this committee to suggest reference to the appropriate committee for consideration of its merits. It is also its duty to recommend the printing

of documents, suggesting the number of copies to be printed. All bills and resolves that are ordered printed are corrected as to matters of form by the Revisor of Statutes for printing. Thereupon, introduction takes place in the regular way through a senator or a representative. The house of introduction now (by vote) refers its bills nearly always to the committee recommended by the Committee on Reference of Bills, and the Senate is notified of this action. The second house may now refer the bill to the same committee "in concurrence," that is, it agrees with the first house that the reference is a correct one. It may, however, disagree, in which case the first house may reconsider its action. Joint committees do the principal committee work in the Maine legislature and there are forty-one of these aside from select or special committees. In addition to the joint committees, the House maintains the committees on Ways and Means, Leave of Absence, Rules and Business of the House, Bills in the Third Reading, Engrossed Bills, Election and County Estimates. The Senate maintains regular standing committees on Bills in Second Reading and on Engrossed Bills.

¶ 235. Tabling

In this state, tabling is a frequent action and usually serves a normal parliamentary use. Its significance is not ordinarily adverse to the bill but generally a temporary procedure pending some further action, as awaiting report of reference committee, or awaiting reference or printing. This is the correct use of tabling in the sense described above in ¶ 188. However, tabling is also frequently resorted to in order to jockey the time of consideration, and this is done by tabling and then specifically "assigning for consideration," thereby fixing a definite time for its consideration.

¶ 236. Readings

There are three readings in the House and only two in the Senate. In the House, the bills are read a first and second time after the committee report followed by reference to Committee on Bills in Third Reading. When this committee reports the bill, it is then read a third time and passed to be engrossed. After engrossment by both houses, without further reading, it is passed to be enacted (except for resolutions which are not enacted). In the Senate, the first and second readings are also made after receipt of a committee report. The bill is then passed to be engrossed again by both houses.

In Maine, all bills, after engrossment, and regardless of the house of their origin, are returned to the House of Representatives and passed to be enacted there first (or if a resolve, passed finally). No engrossed bill ever goes to the Senate until it has been acted upon by the House. When the House returns the bill to the Senate after passage to be enacted, the Senate then passes it to be enacted, without further reading.

In the Senate, the Committee on Bills in the Second Reading is equivalent to the House Committee on Bills in the Third Reading and both perform the same function of examining and correcting the bill. Second reading in the Senate takes place after report by the Committee on Bills in the Second Reading and it is thereupon passed to be engrossed.

Upon receipt of a committee report in either house, it is adopted or rejected and then sent down (or up) for concurrence by the opposite house. The terms "down" or "up" indicate the house in which the action takes place. A matter is sent "down" from the Senate to the House and "up" from the House to the Senate. It should be noted again that this action by both houses takes place before the bill has passed either house. If either house fails to take the same action on a committee report, it is sent back to the other house "in non-concurrence" and there reconsidered. Formerly, an unfavorable report of a committee might be accepted in the Senate and sent to the House. The House might then decide that it did not agree with the unfavorable report and substitute the bill in the place of the report and send it back to the Senate "in non-concurrence." If the Senate should then agree to adopt the view of the House, the bill would continue its progress; otherwise it would be dead. The presiding officers of both houses of the 93rd Legislature made a new interpretation of the rules. They ruled that an "ought not to pass" report received by the house of introduction of a bill or resolve and accepted, killed the bill or resolve and ended consideration. Today, therefore, the acceptance of an unfavorable report accepted goes no further, but an unfavorable report rejected, or, a favorable report accepted or rejected, continues its shuttling between the houses.

¶ 237. Numbering

The state of Maine uses two systems of numbers. Originally it was not the custom of the House to number bills until they had been reported out of committee, but this confusing system was abandoned several years ago so that each bill presented to the

legislature receives what is termed a paper number, and this is the number by which it is known throughout legislative action. When the bills are later printed, they receive a new number called a document number, which is not necessarily, or usually, the same as the paper number. The same system prevails in the Senate.

¶ 238. Amendments

As all action proceeds alternately between the two houses prior to final enactment, it follows that amendments also must be adopted by both houses before passage. A House bill may be reported favorably, the report be accepted by the House and sent to the Senate for concurrence. There, the Senate may add a floor amendment and it would then be sent back to the House for concurrence. Failure to concur would now result in the appointment of the conference committee, a condition which normally only takes place in other states after a bill has passed the house of introduction, been amended and passed the second house.

¶ 239. Engrossment and Enactment

After the Committee on Bills in Third Reading in the House, or Bills in Second Reading in the Senate, have made their reports, a bill is then ordered to be engrossed. In other words, engrossment takes place after the final reading. No amendments are in order after passage to be engrossed, but it is possible to amend the bill after it has been read a third time in the House and a second time in the Senate and before engrossment. Engrossment is an affirmative action, not a mere formality. The actual engrossing is done by the secretary of state's office and the bill is then returned to the House (never the Senate) for further action. All engrossed bills are sent to the standing Committee on Engrossed Bills "to be strictly examined; and if found by them to be truly and strictly engrossed, they shall so report to the House, and the question shall be taken without any further reading, unless on motion of any member, a majority of the House shall be in favor of reading the same as engrossed."

It is then in order to vote on the question of passing the bill "to be enacted" and when this has been done and sent "up" and concurred in, the bill is sent to the governor.

Resolutions which do not have the effect of law are simply read and adopted either by one house or, if concurrent resolutions, by both houses. Resolves, as the term is used in Maine, are treated the same as bills, except that they are read only twice

in the House. They are passed to be engrossed in both branches, the same as bills, and the final action after they have been engrossed is called "final passage" instead of "passage to be enacted."

EXAMPLE OF MAINE LEGISLATIVE PROCEDURE ON HOUSE BILL

House	*Joint Action*	*Senate*
	1. To Committee on Reference of Bills before formal introduction.	
2. Introduction, referred to a Joint Standing Committee as recommended by CRB. Ordered printed. Sent to printer.		3. Referred to same committee "in concurrence."
	4. Considered by Joint Standing Committee. Public hearing held.	
5. Committee makes report (e. g. "ought to pass").		
6. Report accepted and bill read twice (resolves read once). Automatically to Committee on Bills in Third Reading.		
7. Reported by Committee on Bills in Third Reading. Debate, amended. Passed to be engrossed as amended. Sent up for concurrence. (Acceptance of unfavorable report *kills the bill here*).		8. OTP report accepted. Read first time. Automatically to Committee on Bills in Second Reading. 9. Reported by Committee on Bills in Second Reading. Debate, nonconcurrence in amendment. Passed to be engrossed without amendment in nonconcurrence.
10. House refuses to recede. Votes to insist and asks Committee of Conference. Conferees appointed.		

House	*Joint Action*	*Senate*
		11. Senate insists. Joins conference. Conferees appointed.
	12. Conference Committee considers and makes report to the house which first asked for a conference.	
13. Conference Committee report accepted. Engrossed in accordance with report.		
		14. Conference Committee report accepted. Engrossed in accordance with report.
	15. Secretary of state engrosses. Committees on engrossed bills report.	
16. Engrossing Committee reports bill as engrossed. Passed to be enacted. Sent up for concurrence.		
		17. Engrossing Committee reports bill as engrossed. Passed to be enacted. Sent to governor.
	18. To governor. 19. Approved or vetoed. If vetoed, House bill returned to House. (Senate bill would be returned to Senate).	
20. Passed over veto.		
		21. Passed over veto in concurrence.

CHAPTER 22

NEBRASKA PROCEDURE

¶ 240. Basic Difference

Nebraska is the first unicameral state legislature in the United States, and to date the only one in that classification. Most of the Canadian provinces are unicameral in form, and this is true of many minor political subdivisions everywhere in America. The states, however, have been formed in the tradition of two houses balancing each other and representing different interests, or at least different aspects of the same interests. As has been shown elsewhere, the bicameral system is of ancient origin.

Two principal reasons seem to have guided the proponents of the bicameral system: The first, which is no longer so valid a consideration, is that each of the two bodies represented somewhat different interests; the second, that a separate body of men whose assent is necessary to legislation will act as a further check against hasty or ill-considered laws. On the other hand, the proponents of the unicameral system contend that it ought to make for simplicity and economy. So far as the number of legislators is concerned, this is accomplished by restricting them to a total of forty-three which is less than the combined membership of the house and senate of any other legislature in the country. The legislature, however, has introduced about the same number of bills and remained in session about the same length of time since the adoption of the unicameral system.

¶ 241. Organization

The single house of Nebraska is called the Legislature. Its presiding officer is the lieutenant governor. At the commencement of each regular session, the Legislature nominates and elects a speaker, a clerk, a sergeant-at-arms, a postmaster and a chaplain. The speaker presides when the lieutenant governor is absent, incapacitated, or when he is acting as governor. In the absence of both the lieutenant governor and the speaker, the chairman of the Judiciary Committee presides. Besides their official designation as indicated above, whoever may at the time be chairman of the Legislature, is the *president*. The president has the right to name any member to perform the duties of the chair for a period not extending beyond adjournment for that day.

¶ 242. Committees

There are thirteen standing committees provided as follows:

Agriculture, including conservation, fish and game, live stock and grazing;

Appropriations, including finance, ways and means, and state institutions;

Banking, Commerce and Insurance;

Claims and Deficiencies;

Education, including university and normal schools and libraries, and school lands and funds;

Enrollment and Review, including arrangement, phraseology and correlation;

Government, including state, county and municipal governments, elections and apportionment;

Judiciary;

Labor and Public Welfare, including social security and child labor;

Public Health and Miscellaneous Subjects;

Public Works;

Revenue, including taxation, salaries, licenses and fees;

Rules, including procedure and order of business.

The Committee on Committees recommends to the Legislature for its approval and adoption the membership of each of the foregoing standing committees including the chairmen. This committee is also permitted to select, aside from the standing committees, all other committees, except where otherwise ordered by the Legislature. Its duties further include arrangement and publication of a schedule of regular standing committee meetings, in such a manner as to avoid conflict in the assignment of members to such committees. The Committee on Committees itself is elected at the commencement of each session.

There is also provided a Committee on Order and Arrangement, which consists of the chairmen of the committees, before whom regularly referred bills and resolutions have public hearings. This committee reports to the Legislature the order in which bills and resolutions are to be considered on the general file, but the order is effective only upon approval by the Legislature.

A Reference Committee is also created consisting of the lieutenant governor, the speaker and the chairman of the Committee on Committees, and this committee decides to which committee any given bill or resolution shall be referred.

By rule, committees meet at 2:00 P. M. unless otherwise ordered.

¶ 243. Introduction

The rules require that members must only introduce bills which they are willing to support themselves, and thus assume responsibility for their introduction. In other states, many bills are introduced "by request" and the introducer thus avoids responsibility for sponsorship. Not more than three members can be sponsors of any one bill. A time limit is set for these introductions at the twentieth legislative day, except upon recommendation of the governor, or a standing committee. As in several other states, the excellent practice is followed of requiring bills which amend the statutes to show the new matter proposed, the old matter to be retained and the old matter to be deleted from the statutes.

¶ 244. Readings

Every bill and resolution is read the first time by title upon introduction. Each section is read again when the bill is reached on general file, which corresponds to orders of the day or general calendar in other states. Third and final reading at large takes place not less than five legislative days after initial reference to the Committee on Enrollment and Review and two legislative days after its reference to the final reading file. On its final reading, the bill is read in full with all the amendments which have been proposed and adopted.

¶ 245. Committee Powers and Duties

In Nebraska, there are only two reports which may be made by committees for a bill—either that it be placed on the general file (with or without amendment), or that it be indefinitely postponed. If the report is favorable, the bill is placed on the general file by the Committee on Order and Arrangement. If the report is unfavorable, and indefinite postponement recommended, the bill is dead for the session unless by a majority of votes by all elected members upon motion made within three legislative days after the committee makes its report, or, by a two-thirds vote of all the elected members upon motion made more than three legislative days after such committee report, the bill is, notwithstanding the unfavorable report, placed on the general file. It is required of the committees that when they report a bill they must

submit a brief statement of the main purpose of the measure with such amendments as they deem proper. The statement must also give the committee's reasons for making the report, together with the minority view, if any. Committees are all required to hold a public hearing on five days' notice before taking final action on any bill or resolution.

¶ 246. General File

As stated above, the general file is equivalent to the calendar. Bills are listed and considered on the general file, after they come out of committee, in the order in which they are reported from such committees; but this order may be changed by the Committee on Order and Arrangement. No further change is then permitted except by a majority vote of all the elected members. General appropriation bills, however, take precedence over all other bills on the general file. When bills are reached in their regular order on the general file, similar action is taken as in other states when bills are reached upon the calendar. The bill is read section by section, committee amendments are adopted or rejected and new amendments, if any, are proposed from the floor. At this time it is in order to move that the bill be passed over, which is the equivalent of tabling, permitting the bill to hold its place on the calendar while other measures considered more urgent for one reason or another are reached.

¶ 247. Advancement and Select File

After consideration on the general file, the bill may be indefinitely postponed, in which case, unless there is reconsideration by a member voting with the prevailing side, or not voting, the bill is dead for the session. A motion to reconsider requires the vote of a majority of the elected members, except where the motion is to reconsider the vote on a bill which lacks the constitutional majority on the final reading, in which case a three-fifths vote is required. If the bill is not indefinitely postponed, it may then be advanced to enrollment and review, and this is accomplished by the committee of that name whose purpose it is to provide proper arrangement, phraseology and correlation. The bill is now placed upon a calendar called the select file. At this time any of the following motions are in order:

1. To approve or disapprove of any of the changes recommended by the chairman of the Committee on Enrollment and Review.

2. To adopt another amendment, but only by unanimous consent.

3. To recommit.

4. To recommit to the general file, which has the effect of permitting amendment other than by unanimous consent. If the bill is rec mmitted to the general file, it must again go back to the Enrollment and Review Committee and again return to the select file.

5. Indefinite postponement. A bill may not be considered on the select file until three days have elapsed after its advancement from the general file to the Enrollment and Review Committee.

¶ 248. Further Action — Intermediate Between Select File and Final Passage

When a bill is advanced after consideration on the select file, it is again sent to enrollment and review for engrossment, which consists of retyping the bill, with all amendments and changes properly inserted. The chairman of the Committee on Enrollment and Review now makes another report that the bill has been correctly enrolled and sends it to the third reading file. But if there is still another amendment to be made, it must be sent back again to the select file for the specific amendment.

¶ 249. Final Action and Final Reading

No bill may be placed on final reading and final passage until five legislative days after the initial reference to Enrollment and Review, and two legislative days after reference to final reading file, nor until printed copies of the bill in its final form as amended has been made available to members and been on their desk for at least one legislative day. It is now still in order to recommit to Enrollment and Review to correct errors and provide for reengrossment, to recommit to a standing committee with or without instructions, or to recommit to the special file for specific amendments. As in most states, a two-thirds vote is necessary to adopt an emergency clause. When a bill containing the emergency clause does not receive two-thirds majority on final reading, then it is considered deleted from the bill.

¶ 250. The Governor

As in other states, the governor may disapprove any item or items of appropriation contained in bills passed by the Legislature,

or, of course, he may disapprove a bill in toto. These bills, including the vetoed items of appropriation bills, may be passed over the governor's veto by a three-fifths vote of all elected members

PART VI

CONSTITUTIONAL AMENDMENTS AND TREATIES

CHAPTER 23

CONSTITUTIONAL AMENDMENTS

¶ 251. Constitutional Law

The fundamental law of the federal government of the United States derives its authority from a written document called the Constitution, which sets forth the frame of that government. The theory behind the constitution is that this framework of the state should be less subject to change than an ordinary statute. Like all other principles which at one time or another have been studied, discussed, understood, and promulgated, this principle at other times and places is forgotten. The documents adopted early in the nation's history are generally a short and simple outline of the essential law of the state in the broadest and most general terms. Many of the later documents are enormously prolix, and go far afield into the domain of legislation, rendering rigid and less flexible many minor matters of regulation and administration which ought to be the subjects of ordinary statutes.

As a result, some states are forever making amendments to their constitutions, rendering the "fundamental framework" scarcely less subject to change than a statute but in a clumsier, stiffer manner. Some states seem to try to include in the "fundamental framework" a volume of detail which has no place in the document. The number of amendments to constitutions vary from none (Tennessee) to over a hundred. Proposed amendments to the constitution of California are so common that these proposals have a special designation in the legislative sessions (S. C. A. and A. C. A., Senate and Assembly Constitutional Amendments) instead of being merely designated "resolutions" as in other states.

A study in contrast is afforded between the constitution of Rhode Island adopted in 1843 which contains between six and seven thousand words, including amendments, and that of Louisiana adopted in 1921 containing about sixty-eight thousand. The constitution of Louisiana is therefore about ten times the length of the constitution of Rhode Island, and among its many provisions having little or no relation to the fundamental framework of

government, are such subjects as a gasoline tax, corporations, a great volume of words properly belonging in a New Orleans charter or book of ordinances, reparation claims for levee break, etc.

In England, the fundamental law, also referred to as the constitutional law, is not to be found in any one document, and is practically no more difficult to change than any other law, being subject to the will of Parliament alone. The authority of a state government is not derived from, but is restricted by, the constitution of the state, by the federal Constitution, and by the statutes and treaties made pursuant thereto, and in those states created out of territories, by the organic acts of Congress conferring statehood. All laws enacted contrary to the provisions of any of these fundamental documents are void, at least to the extent of such contradiction. It appears, however, that once a state is created and admitted, organic acts cease to be binding as to matters inconsistent with the status of the new state now having the same rights and sovereignty as the original states.

¶ 252. Origin of Constitutions

All of the original constitutions of the states were adopted by conventions (Provincial Congress in South Carolina), since 1776. Rhode Island continued to use the Charter of 1663 as its basic law until 1843. None of the original thirteen states submitted its constitution to the voters but Connecticut and Virginia. In addition, the constitutions of Alabama, Arkansas, Indiana, Louisiana, and Ohio were adopted without the voters' approval. All the rest were submitted to the voters for their adoption. The forty-eight states have had more than a hundred constitutions. Delaware has had four constitutions, none of which have been submitted to the voters, it being the only state which has never done so. The earliest existing constitution is that of New Hampshire which dates back to 1784, followed by Massachusetts, 1790 and Vermont, 1793. The most recent constitutions are those of Arizona, New Mexico, Louisiana, Missouri and New Jersey, in 1911, 1912, 1921, 1945 and 1947 respectively. Twenty-two states retain their original constitutions, with amendments. The rest have had from two to nine, Louisiana having changed its constitution most frequently.

¶ 253. Amendments to the Constitution

In important respects, the procedure for amending the constitutions of the various states differs from the procedure for

amending the statutes. The net result, of course, is to make more difficult, and to require more caution in, the changing of that law which the framers of the constitution believed ought not to be changed lightly. As has been pointed out elsewhere, the constitution is not necessarily confined to the broad general framework of the state, but may also include, and often does include, quantities of material on many matters which, in other states, are regulated by statutes. In any case, it must be assumed that the drafters of the constitution did not wish to give the legislature free rein in changing all the laws. This has been accomplished by incorporating into the constitution any statutes not to be lightly changed.

The methods of amending the constitution vary greatly in difficulty but even in the states where amendment is easiest, it is still more difficult than the amendment of a statute. In the United States, all but two states require that all amendments to their constitutions must be submitted to the vote of the people. Delaware provides a method of amendment without assent of the voters, and New Hampshire provides no method of amendment at all, except at seven year intervals, when the question of calling a constitutional convention for the purpose is submitted to a vote. The Tennessee constitution of 1870 has never been amended, while South Carolina, on the other extreme end of the list, has had over 180 since 1895. These methods are described in greater detail below.

¶ 254. Instrumentalities for Amendments

A constitution may be amended by (a) the legislature, (b) the people, or (c) a constitutional convention. In every state except New Hampshire, the legislature may initiate an amendment to the constitution. In states which have an initiative law (see ¶ 10), the electorate may propose an amendment to the constitution. In thirty-two states, a constitutional convention is provided for as an alternate method for amendments, and in New Hampshire it is the only method. In all cases, the body which originates the proposed amendments does not have the final word in their enactment.

¶ 255. Initiation

Besides initiation by the people as described in Chapter 2, the legislature, or one of its branches, in every state may take the first step toward a change in the constitution except in New Hampshire. In that state, a constitutional convention, which may be voted into existence once every seven years by the people,

alone has the power to propose amendments. In Vermont, constitutional amendments must originate in the Senate and be passed by the House. In Connecticut, constitutional amendments must originate in the House and are not submitted to the whole legislature until the next session as will be described hereafter. In all other states, the amendment takes the form of a resolution introduced in either house to be adopted by both.

In little less than half the states, this resolution must be passed by a majority of the total elected membership of the legislature (of the House of Representatives in Connecticut). In others, the amendment must be passed by two-thirds of the elected membership. In Vermont, two-thirds of the Senate must propose the amendment, which must be concurred in by a majority of the House. In the rest, the minimum requirement is three-fifths. The signature of the governor is rarely required to be affixed to these resolutions. The states requiring two-thirds of the votes of the legislatures are Alabama, California, Colorado, Delaware, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, South Carolina, Texas, Utah, Vermont, Washington, West Virginia and Wyoming. The states requiring three-fifths of the vote of the legislatures are Florida, Kentucky, Maryland, Nebraska, North Carolina and Ohio.

¶ 256. Second Step

After the legislature has passed a proposed constitutional amendment, the proposal must be published. The usual method provided either by the constitution or by statute is to advertise the proposal in at least one weekly publication in each county from four weeks to six months prior to the next election, or, where not to be voted on by the people immediately, by publication in the bound volume of the session laws of that session. The publication, of course, must be in English, but Maryland also provides for a publication in German and New Mexico in Spanish. Several states have no provision for publication in the constitution.

¶ 257. Intermediate Steps

Connecticut, Delaware, Indiana, Iowa, Massachusetts, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and Wisconsin provide that the original proposal must be repassed by the next legislature. In the interim, the people have had an opportunity to vote at least for the members of the lower house at an intervening election; the theory, no doubt, being that they thus are afforded a chance to express their approval or disapproval of the legislators who passed

the proposed amendment. Indeed, one state provides that the publication of the proposed amendment must be accompanied by a list of the legislators and how they voted on the proposal.

¶ 258. Final Steps

After the amendment has passed the legislature the required number of times, it is then submitted to the people for vote in all states except Delaware. In Delaware, passage the second time is sufficient to make the amendment a part of the constitution. Most states provide that where more than one amendment is submitted, they must be so treated that the people may vote on each one separately. The election at which the proposal is to be submitted to the people is usually the next general election following final passage by the legislature, but the legislature may provide for a special election or the governor may call one in a number of states. The rule is that the amendment becomes part of the constitution as soon as adopted by the people. Exceptions: January 1st next (New York); thirty days after election (Michigan); on governor's proclamation (Maryland), etc.

¶ 259. Limitation on Amendments

Most states provide no limitation on the number or frequency of amendments. In number, Arkansas forbids more than three at a time, Colorado six, Kansas three, Kentucky two, Montana three. In point of time, Illinois does not allow an amendment to the same article more than once in four years. In Indiana, no additional amendments are permitted to be proposed while others are awaiting action of the next assembly or of the people. In Kentucky, the same amendments may not be resubmitted for five years and in Massachusetts, three. Amendments in New Jersey may only be proposed every five years and the same is true of Pennsylvania. Tennessee permits amendments every six years, Vermont every ten.

¶ 260. Constitutional Conventions

The constitution of the state of California (Article XVIII, Section 2) provides for a constitutional convention in the following terms:

> "Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the

> next general election for or against a convention for that purpose, and if a majority of the electors voting at such election on the proposition for a convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election at such place as the Legislature may direct. At a special election to be provided for by law, the Constitution that may be agreed upon by such convention shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California."

As in California, thirty-two other states provide for submission of the calling of the constitutional convention to the voters. The Georgia legislature may make the call on its own initiative. In Michigan, the matter of calling a constitutional convention was submitted to the electorate in 1942 and similar elections are provided for each sixteenth year thereafter. In New York, it is provided that in 1916 and every twentieth year thereafter, and at such times as the legislature may provide, the question of calling a constitutional convention be submitted to the people. In Oklahoma, it is provided that the question of a proposed constitutional convention "shall be submitted to the people at least once in every twenty years" without specifying any particular year in which the first election on the matter is to be held. The constitutions of Arkansas, Connecticut, Indiana, Louisiana, Maine, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas and Vermont do not provide for constitutional conventions.

There have been some 190 constitutional conventions held, of which the latest, up to January 1, 1948, was in New Jersey. The fact that no provision is made for it in the constitution, of course, does not prevent such a convention being called. Louisiana, Mississippi and Arkansas have had among them twenty-four such conventions though their constitutions are silent on the subject.

Twenty-one states require more than a majority vote of the legislature to call a constitutional convention, while the question must be submitted to the people periodically in Iowa (ten years), Maryland (twenty years), Michigan (sixteen years), Missouri (twenty years), New Hampshire (seven years), New York (twenty years), Ohio (twenty years), Oklahoma (twenty years).

CHAPTER 24

TREATIES

¶ 261. Definition—Contracting Parties

A treaty is an agreement between governments. In the United States, most treaties, of course, are with foreign governments. But the states may, with the consent of Congress, make agreements and compacts among themselves, and many have done so. The federal government also makes treaties with Indian nations and tribes. Agreements which amount to treaties, but are not so called, are also entered into between the federal government and the governments of individual states.

¶ 262. Definitions—Similar Documents and Terms

Other terms and kinds of documents of a like nature include executive agreements, compacts, conventions, protocols, acts and articles. They are all alike in this, that they are agreements between governments. Some of the terms differ as to formality and authority to contract. "Treaty" seems to be the broadest and most generic term, and many documents given other names are, for all purposes, treaties. A protocol is more or less of the nature of a preliminary or rough draft of a treaty; a convention is an agreement made prior to the conclusion of a more definite and final treaty. The words "acts" and "articles," sometimes applied to treaties, have little more significance than the word "paragraphs." Compacts, acts and articles are substantially synonymous with treaties when used to apply to international agreements. The executive agreement has the same effect as a treaty, but differs in execution and subject matter, as will be explained below.

¶ 263. Legal Status

A treaty supersedes all the laws of the United States made prior thereto, and all local, state and federal laws and constitutions, except the United States Constitution.[1] Article VI of the United States Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties

[1] Cherokee Tobacco, 11 Wall. (U. S.) 620. U. S. v. Old Settlers, 148 U. S. 427. Fong Yue Ting v. U. S., 149 U. S. 698.

made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

¶ 264. Treaties—Foreign—Origin in United States

The President of the United States is the treaty making power in this country, subject to the veto of the Senate. The actual wording of the second paragraph of Section 2 of Article II of the federal Constitution begins:

> "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; . . ."

But this power of the Senate is strictly one of veto. It may not originate a treaty, and the president need not even complete the ratification of a treaty which the Senate has approved. Thus, on the President alone rests the primary responsibility for the conduct of the foreign relations of the United States. No preliminary negotiations are within the power of the Senate to control, and all affirmative steps are taken by the President.

¶ 265. Preliminary Procedure

The Department of State is the body through which preliminary negotiations for the conclusion of a treaty occur. Details are worked out, discussions carried on, and the first signing by plenipotentiaries occurs in and through this Department. There is no special place where any of this may happen. It may be, and frequently is, conducted in the Department of State in Washington, but discussions and even the eventual signing may be in the capital of another nation or any other place. Of course, treaties may be originated by a foreign power or by the United States. If by the United States, it is solely by the authority of the President. Signing of the treaty by the plenipotentiaries and by the Secretary of State of the United States does not effectuate the document, either domestically or internationally.

¶ 266. Intermediate Action

The signed document is submitted to the President who then transmits it to the Senate, not for ratification, but for "advice and consent," or veto, that is, the withholding of such advice and consent. The treaty, accompanied by a message from the Presi-

dent and the letter of transmittal from the Secretary of State, is referred to the Committee on Foreign Relations. The text of the treaty meanwhile is not made public, and no copies are available for general distribution until reported out of committee. *The form of the favorable report recommends that the Senate* "do advise and consent" to the same. It is, of course, not necessary that the Senate should either accept or reject the treaty *in toto* as it stands, but they may propose amendments and changes. If such proposals are made, they are submitted to the other government and must be acceptable to them and to the President before the treaty can proceed toward its final form.

¶ 267. Final Action—Effective Date

For the United States, the next step is now the signature of the President. This is attached to a ratification document which contains the complete text of the treaty, a statement of the acts leading to adoption, and a declaration that the treaty is thereupon confirmed and ratified. Similar ratification must take place by the proper authority under the laws and customs of the other contracting nation.

It is usual for treaties to state what act and time shall be requisite to cause the treaty to go into effect, and this is customarily stated to be, in the case of bilateral treaties, upon exchange of ratifications. This might be in the Department of State or elsewhere. As soon as the terms of the treaty concerning time of taking effect are thus complied with, the treaty has international force; but there is yet another step required in the United States: the promulgation of a presidential proclamation, reciting the treaty and requiring its observance. The treaty is effective upon exchange of ratifications if that is what it requires by its terms, and it is not affected one way or the other, so far as international obligations are concerned, by the date of the President's proclamation, nor, indeed, whether the proclamation is made or not. The domestic effect of failure to proclaim is not within the scope of this work.

GLOSSARY

Action—Any step of parliamentary procedure upon a proposed law.

Adverse Calendar—A calendar on which bills are placed which have been reported unfavorably by a committee. Bills are not taken from this calendar except upon motion.

Adverse Report—An unfavorable report; a recommendation of any kind other than that the bill should be advanced toward passage.

Assembly—(1) Both houses of the legislature taken together. Usually referred to as the "General Assembly." (2) The lower house in California, Nevada, New Jersey, New York and Wisconsin.

Bobtailing—A practice sometimes resorted to near the end of the session. It consists of striking out all of the bill except the enacting clause and substituting another bill on another subject. By this method, a proposed measure can be rushed through near the close of a session without the formalities required of a bill introduced in the proper way.

Calendar—A list of bills ready for consideration of the whole house, except adverse calendar q. v. ¶ 178.

Calendar Wednesday—An opportunity afforded to Congressional house committees to call up for consideration selected bills of medium importance. Each committee is permitted to name one such bill each week.

Chair—Symbolically, the presiding officer; the chairman, speaker, president.

Cincher or Clincher—Technical procedure to insure against reversal of final action (¶ 201).

Cloture—A rule for limiting debate (¶ 117).

Committee of the Whole—Organization of the whole present membership of a house to act as a committee under committee rules.

Commonwealth—The name applied to the body politic in Kentucky, Massachusetts, Pennsylvania and Virginia.

Companion Bill—(1) The more common but less correct use of this term means identical bills introduced in separate houses at approximately the same time. (2) The more correct and less frequent meaning is bills which supplement each other. Thus, one bill may create some new sort of regulation or new kind of taxation, and another "companion bill" may create the machinery for its enforcement. (3) A totally erroneous use of the term is made to mean the same bill with a new number in the second house as in South Carolina and Pennsylvania. (4) In Iowa this means an identical bill in the opposite house (joint rule 15).

Corresponding Numbers—(1) The numbers of companion bills. (2) The numbers of duplicate bills.

Delegates, House of—The name of the lower house of Virginia, West Virginia and Maryland.

Document—A variable term used to distinguish different types of papers before the legislature. Used principally in Maine and Massachusetts. In Massachusetts, document is distinguished from docket, petition and bill; in Maine, it is distinguished from paper. The Massachusetts document may be a report, etc. The Maine document is usually an unprinted bill. On printing it is called a paper. Elsewhere the word document is often used to distinguish it from a bill, or to include bills and other papers which are not bills.

Do Pass—This is a favorable report. "The committee recommends that the bill *do pass.*" Conversely, "do not pass" is an unfavorable report.

Duplicate Bill—Bill identical in wording introduced at approximately the same time in both houses.

Enacting Clause—Formal words usually necessary to enactment between the title and the body of the bill (¶ 138). *To strike out the enacting clause* is a method of killing a bill by amendment as the bill without an enacting clause will not become law. It disposes of the measure without the necessity of waiting for later legislative procedure.

File—Usually used as synonymous with "calendar" though sometimes in the more common sense of storing away for future reference.

Filibuster—A device for preventing action on a measure by holding the floor indefinitely (¶ 116).

First House—The house in which a given bill has been introduced.

Floor—Figuratively, the floor of the house or senate while that body is in session; action taken "on the floor" is action taken by the whole body *of the house as distinguished from action taken in committee.*

General Assembly—Both branches of the legislature taken together.

General Court—The official designation of the legislature in Massachusetts and New Hampshire.

Hearing—A discussion of the merits of a bill before committee by representatives of public or private interests.

House—(1) The lower, more numerous branch of the state and federal legislatures, usually called House of Representatives but also called Assembly (California, Nevada, New Jersey, New York and Wisconsin), and House of Delegates (Maryland, Virginia and West Virginia). (2) Either branch of the legislature may be referred to as "house" in certain cases, e.g., "The bill passed the house in which it was introduced."

Inexpedient to Legislate—An unfavorable report.

Introductory Number—The number assigned to a bill upon introduction and which remains unchanged throughout its progress in the legislature (designated in New York by the abbreviation Int.) as distinguished from new numbers assigned at various stages of its progress upon reprinting or upon reaching the second house.

Leave to Withdraw—An unfavorable report in Massachusetts which fails to recommend further progress and permits the author to withdraw it from the legislature.

Lobbyist—Legislative counsel; one hired to oppose or further the enactment of bills.

Lower House—Most numerous branch of the legislature; the House of Representatives, the House of Delegates, or Assembly.

Morning Hour—In this term, the word hour is synonymous with period and does not necessarily mean sixty minutes. It refers to certain business transacted when the legislature first convenes. This may include prayer, reading of the journal, introduction of resolutions, petitions, memorials, remonstrances and first reading of bills.

Next Annual Session—A recommendation that a bill be referred to the next annual session is a committee report in Massachusetts. Bills so referred may be taken from the files and reintroduced when the legislature convenes again.

No Legislation Necessary—This is the style of an unfavorable report in Massachusetts and New Hampshire.

Notice of Introduction—A requirement under some rules that notice be given of the intention to introduce a bill (¶ 141).

Orders of the Day—Matters regularly assigned for consideration of the legislature; the calendar. Does not include special orders (q. v.).

Paper Numbers—The name given to numbers assigned to bills in Maine when they are introduced. This is the number to be used for general purposes. Many bills never have document numbers, but all bills have paper numbers. See Document.

Passed by—This term, to be distinguished from "passed", merely means that action is not taken on a given bill when reached in its regular order on the calendar.

Perfection (Missouri)—The process of putting a bill in order, with all adopted amendments included in place for reprinting before third reading and final passage.

Printer's Numbers—The number assigned to a bill by the printer in New York and Pennsylvania. It is usually different from the introductory number (q. v.) and is changed as often as the bill is reprinted. Bills are reprinted whenever amended.

Ratification—(1) In North Carolina, the final acts of both houses necessary to make a bill, which has passed, a law (¶ 204). (2) In South Carolina, a routine procedure prior to delivery to the governor.

Reading—(1) An official ceremony required in the progress of bills before the legislature. (2) The status of such bills after each reading (¶ 143).

Reception Number—A number assigned to bills in New York State usually abbreviated "Rec." This number appears only on bills which have been amended and reprinted in the second house.

Second House—The house to which a bill is referred after having passed the house of introduction.

Select File—A Nebraska calendar (¶ 247).

Senate—The upper house; the less numerous branch of legislatures

Sine Die—Without date. Said of final adjournment as distinguished from adjournment or recess to a fixed date.

Skeleton Bill—A bill introduced in blank except for title and enacting clause. The purpose is to have a measure technically before the legislature before the time limit for introducing bills when there is insufficient time left to prepare a bill in full.

Special Orders—A calendar of bills selected for consideration ahead of other measures.

Tabling—Literally, the act of laying a paper on the table of the clerk, speaker or other official rather than acting upon it. For consequences of tabling see ¶ 188.

Upper House—The senate.

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